

Decision _____


BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 12-03-014 (Filed March 22, 2012)
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**INTERVENOR COMPENSATION CLAIM OF FRIENDS OF THE EARTH
AND DECISION ON INTERVENOR COMPENSATION CLAIM OF FRIENDS
OF THE EARTH**

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Claimant: Friends of the Earth	For contribution to D. 12-12-010
Claimed (\$): \$40, 237.10	Awarded (\$):
Assigned Commissioner: Michel Peter Florio	Assigned ALJ: David M. Gamson
I hereby certify that the information I have set forth in Parts I, II, and III of this Claim is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this Claim has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1).	
Signature:	
Date: 2/22/13	Printed Name: Laurence G. Chaset Attorney for Friends of the Earth

PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)

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A. Brief Description of Decision:	In Decision 12-12-010 (“Decision”), the Commission adopted final Standardized Planning Assumptions and Scenarios for Track 2 of the 2012 Long-Term Procurement Plan (LTPP) proceeding. These assumptions will be used for forecasting system reliability needs for California’s electricity grid. Based on these forecasts, future decisions will determine specific procurement system and bundled need authorizations or requirements for California investor-owned utilities. The Decision prioritizes modeling an important Early SONGS Retirement (“ESR”) sensitivity to the Base Case scenario.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

		Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):			
4	1. Date of Prehearing Conference:	April 18, 2012	
	2. Other Specified Date for NOI:	N/A	
	3. Date NOI Filed:	August 31, 2012	
	4. Was the NOI timely filed?		
Showing of customer or customer-related status (§ 1802(b)):			
5	5. Based on ALJ ruling issued in proceeding number:	Please see comment.	
	6. Date of ALJ ruling:		
	7. Based on another CPUC determination (specify):		
	8. Has the Claimant demonstrated customer or customer-related status?		
Showing of “significant financial hardship” (§ 1802(g)):			
6	9. Based on ALJ ruling issued in proceeding number:	Please see comment.	
	10. Date of ALJ ruling:		
	11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?			
Timely request for compensation (§ 1804(c)):			
7	13. Identify Final Decision:	D.12-12-010	
	14. Date of Issuance of Final Order or Decision:	December 24, 2012	
	15. File date of compensation request:	February 22, 2013	
	16. Was the request for compensation timely?		

C. Additional Comments on Part I (use line reference # as appropriate):

	#	Claimant	CPUC	Comment
8	4	FOE		<p>Friends of the Earth (“FOE”) was unable to timely file its NOI in this proceeding because of the lack of publicly available information surrounding the January 2012 outages at the San Onofre Nuclear Generating Station (“SONGS”), the Commission’s unexpected delay in issuing an Order Instituting Investigation (“OII”) into those outages and the lack of clarity regarding the scope and interrelatedness of the OII and the LTPP.</p> <p>FOE had followed all publicly available information regarding the SONGS outages. However, the U.S. Nuclear Regulatory Commission (“NRC”) did not issue a public</p>

		<p>report detailing the technical equipment problems and the current status of SONGS until July 18, 2012. That July report was not issued until two months after the filing deadline for NOIs in this proceeding.</p> <p>In addition, the roles of this Commission and the NRC in determining SONGS' future were unclear. It was not until the August 2, 2012 CPUC Business Meeting that comments from President Peevey made clearer the role of each agency and the expected timing of the Commission's investigation.</p> <p>FOE originally planned to limit its participation to the OII. However, President Peevey's August 2, 2012 comments on the limited scope of the anticipated OII, which would not be issued until October 25, 2012, suggested that FOE needed to participate in both the LTPP and the OII in order to represent the interests of its members.</p> <p>Therefore, the lack of publicly available information from the NRC, the confusion and delay surrounding the Commission's issuance of an OII, and the limited scope of the OII made participation in the LTPP more important than originally anticipated. Because of this lack of clarity, FOE only decided it should participate in the LTPP after the filing deadline for NOIs.</p> <p>FOE's late-filed NOI was accepted as filed August 31, 2012.</p>
5, 6	FOE	<p>This request is FOE's first request for intervenor compensation and the Assigned ALJ in this proceeding has not yet ruled on FOE's customer-related status or its showing of "significant financial hardship." FOE respectfully requests that the Commission approve FOE's showing of significant financial hardship in its NOI and similarly make a finding that FOE qualifies for intervenor compensation with Category 3 customer-related status.</p>

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PART II: SUBSTANTIAL CONTRIBUTION (to be completed by Claimant except where indicated)

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059). (For each contribution, support with specific reference to the record.)

9	Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
	<p>FOE's substantial contribution relates to the inclusion and high priority of the ESR sensitivity to the base case scenario in the planning assumptions. Prior to FOE's involvement in this proceeding and its request in technical comments that the ESR sensitivity be included as a high priority, the retirement of SONGS by 2015 was considered a high, <i>i.e.</i>, unlikely, nuclear retirement scenario. The other two potential nuclear scenarios, the Mid and Low retirement scenarios, did not assume the retirement of SONGS until after 2022. Moreover, Commissioner's Ruling on June 27,</p>	<ul style="list-style-type: none"> • Technical Comments of Friends of the Earth on Energy Division's Proposed Scenarios, pp. 1-3 (Sep. 5, 2012) ("Technical Comments"). Per the Commission's request, these comments were sent directly to Energy Division Staff and were not formally filed. • Policy Comments of Friends of the Earth on the Planning Assumptions to be Used in Track 2, pp. 1-7 (Oct. 5, 2012) ("Policy Comments"). • Reply Comments of Friends of the Earth on 	

<p>2012, (“June Ruling”) included these three possible nuclear retirement scenarios among numerous other supply-side assumptions and sensitivities. After the June Ruling, it was uncertain whether the early retirement of SONGS would be modeled and appropriately considered in the LTPP.</p> <p>FOE’s presentation of facts and arguments in several rounds of comments addressed the importance of assuming the early retirement of SONGS and, therefore, substantially contributed to the Decision.</p> <p>As discussed at more length below, FOE made a substantial contribution by clearly establishing the following two points:</p> <ul style="list-style-type: none"> • The future operation of SONGS is highly uncertain due to a long list of economic and regulatory factors that make its continued operation speculative; and • This uncertainty makes the ESR sensitivity critically important to include in modeling because the SONGS plant represents a substantial amount of capacity. <p>These two propositions constitute a unique and substantive contribution, because they helped to inform the Commission determination to not only include the ESR sensitivity in the base case, but also to give the ESR sensitivity the third highest modeling priority of any scenario or sensitivity.</p>	<p>the Planning Assumptions to be Used in Track 2, pp. 6-7 (Oct. 19, 2012) (“Reply Comments”).</p> <ul style="list-style-type: none"> • D.12-12-010, Attachment A, pp. 10-11, 14-15, 20 (The ESR is not only included in as a sensitivity to the base case scenario in response to FOE’s comments, but it is also listed as the third modeling priority in column 3 of the LTPP Scenario Matrix on p. 20 of Attachment A) (“Decision”). 	
<p><u>Establishing the extent of uncertainty surrounding the future operation of SONGS.</u></p> <p>FOE made a substantial contribution to the Decision with its extensive discussion and presentation of the factors that make reliance on the future, full-capacity operation of SONGS a high-risk procurement planning assumption that is fraught with economic and regulatory uncertainty.</p> <p>FOE presented a comprehensive list of the economic factors creating uncertainty in the long-term operation of SONGS, including:</p> <ul style="list-style-type: none"> • Replacement or repair of steam generators and the cost of replacement 	<ul style="list-style-type: none"> • Technical Comments at 1-2. • Policy Comments at 4-12. • Reply Comments at 6-7. • Decision at p. 8 (The “nuclear retirement assumption labels have been changed in the final scenarios to refine the analysis, given the heightened uncertainty surrounding [SONGS].”). • Decision at Attachment A, pp. 11 -12 (listing the ESR sensitivity as one of four high priority modeling scenarios). 	

<p>power during those repairs;</p> <ul style="list-style-type: none"> • Construction of alternative cooling methods to comply with the State Water Board’s once-through cooling rules; • Cost of seismic studies and installation of seismic upgrades and cost of replacement power during that construction; • Increased maintenance costs associated with an older plant; • Potential increases in uranium costs; • The costs of storing additional amounts of spent fuel; and • The costs of complying with any new seismic regulations from the Nuclear Regulatory Commission. <p>Moreover, FOE’s comments argued that SONGS is not needed for system reliability and adequate alternatives to SONGS exist. If a plant will be extremely expensive to operate and is not needed for reliability, its future as an operating resource is questionable. Accordingly, FOE’s comprehensive showing of the uncertainty facing the long-term operation of SONGS informed the Commission’s understanding of the significance and depth of that uncertainty, provided support for including the ESR sensitivity in the base case and substantially contributed to the Decision.</p>		
<p><u>Establishing the importance of modeling the ESR sensitivity.</u></p> <p>FOE substantially contributed to the Decision, and its inclusion and prioritization of the ESR sensitivity, by stressing the policy importance of making the ESR sensitivity a high-priority. Energy Division acknowledged in LTPP workshops in which FOE participated that the resources available to the Commission to model the different scenarios and sensitivities would be limited. The limited funds demand that only the most important sensitivities be modeled. FOE’s comments ensured that the ESR scenario, a crucial look into the likely 2200 MW hole that will exist in the State’s generation portfolio from the closure of</p>	<ul style="list-style-type: none"> • Technical Comments at 3. • Policy Comments at 8-11. • Reply Comments at 6-7. • Decision at 14-15 (stating, among other things, that “[t]he acutely heightened uncertainty surrounding the San Onofre Nuclear Generating Station (SONGS) requires particular focus on understanding the long term planning implications of the state’s nuclear fleet.”). 	

<p>SONGS, received status as one of four high-priority scenarios to be modeled.</p> <p>Also, as FOE noted in its Policy Comments, the ability of cost-effective alternatives to meet the load once met by the 2200 MW full capacity of the SONGS facility is a better match to California's evolving grid management challenges.</p> <p>Finally, in its Reply Comments, FOE again stressed that the Commission should not rely on the continued operation of SONGS for the creation of Bundled Procurement Plans.</p>		
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

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	Claimant	CPUC Verified
<p>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	Yes	
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	Yes	
<p>c. If so, provide name of other parties:</p> <p>The California Independent System Operator, Clean Coalition, Alliance for Nuclear Responsibility, L. Jan Reid, Large-Scale Solar Association, Sierra Club, Union of Concerned Scientists, and Women's Energy Matters all addressed the importance of considering the early retirement of SONGS.</p>		
<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>The LTPP considers a wide swath of issues related to meeting the energy procurement needs of California's investor-owned utilities. FOE made a unique presentation regarding the depth and breadth of an enormously important single issue, the loss of 2200 MW of capacity in Southern California. No other party provided the same extent of detail on the factors that make future operation of SONGS uncertain, and FOE made a unique, in-depth argument regarding the likelihood of the retirement of SONGS. Given FOE's surgical focus on SONGS-related issues, FOE avoided duplication with parties that addressed the full range of issues considered in the LTPP. FOE supplemented parties' comments on the ESR sensitivity by providing detailed and focused comments that drew upon FOE's unique institutional knowledge and expertise on nuclear issues.</p> <p>Also, As FOE's time entries for Laurence G. Chaset demonstrate, FOE was proactive in meeting with other intervenors to discuss positions and coordinate participation in this proceeding. Accordingly, FOE's participation avoided duplication to the extent possible and, where duplication existed, complemented the presentations of other groups.</p>		

C. Additional Comments on Part II (use line reference # or letter as appropriate)

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#	Claimant	CPUC	Comment

PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Claimant except where indicated)

A. General Claim of Reasonableness (§§ 1801 & 1806):

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<p>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)</p> <p>FOE’s participation contributed to Staff’s adoption of the ESR sensitivity in its base case scenario, a critically important component of the Decision. At the outset of FOE’s participation, FOE raised its core issue: the planning assumptions should reflect, on a high priority basis, the uncertainty surrounding the future operation of SONGS.</p> <p>FOE only undertook tasks or activities that it deemed necessary to its effective presentation of its core concern to decision-makers. These tasks include drafting the Technical Comments, Policy Comments, and Reply Comments, referenced in Part II, <i>ex parte</i> meetings with Commissioners’ policy advisors and staff, and brief Reply Comments on the Proposed Decision preceding the Decision.</p> <p>All of FOE’s tasks were reasonably calculated to achieve its core interest in this proceeding and all bear a reasonable relationship to the ultimate outcome of this proceeding: the inclusion and high prioritization of the ESR sensitivity in the base scenario. The ultimate request for compensation of \$40,237.10 is reasonable in light of the importance of the ESR sensitivity to future resource planning in California.</p>	<p>CPUC Verified</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>FOE takes seriously its responsibility to California’s ratepayers as an intervenor. Its hours are reasonable and reflect conscientious efforts to limit the expenses associated with participation to solely those topics pertinent to FOE’s key concern. FOE reviewed all relevant filings, as is necessary to competently participate in the LTPP proceeding, but limited its active participation to only those opportunities to advance its core issue of making the ESR sensitivity a high priority.</p> <p>For attorney hours, FOE effectively delegated appropriate tasks to attorneys Timothy J. Lindl and Thadeus B. Culley, limiting to the extent possible the higher billing rate of its lead attorney, Laurence G. Chaset. FOE avoided duplication of hours, to the extent possible, by primarily conducting its meetings with its lead attorney and by also substantially limiting participation in related workshops and</p>	

<p>client strategy meetings to one attorney.</p> <p>The hours spent by FOE's attorneys to research and draft the documents submitted in this proceeding are reasonable and within the customary range for projects of similar complexity and scope.</p>	
<p>c. Allocation of Hours by Issue</p> <p>FOE is claiming a substantial contribution to the Decision on the basis of its work to advance, and rebut counterarguments against, inclusion of the ESR sensitivity in the base scenario. Accordingly, all time entries in <i>Attachment 2</i>, relate solely to this issue.</p>	

B. Specific Claim:

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CLAIMED						CPUC AWARD		
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ATTORNEY, EXPERT, AND ADVOCATE FEES

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Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
L. Chaset	2012	55.8	\$350/hr	Res. ALJ-281	\$19,530			
T. Lindl	2012	70.7	\$215/hr	Res. ALJ-281	\$15,200.50			
T. Culley	2012	11.4	\$200/hr	Res. ALJ-281	\$2,280			
Subtotal:					\$37,010.50	Subtotal:		

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OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Subtotal:						Subtotal:		

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INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
T. Lindl	2012	5.5	\$107.50/hr	50% of rate	\$591.25			
T. Lindl	2013	6.1	\$107.50/hr	50% of rate	\$655.75			
T. Culley	2012	3.4	\$100/hr	50% of rate	\$340			
T. Culley	2013	10.1	\$100/hr	50% of rate	\$1,010			
Subtotal:					\$2,597	Subtotal:		

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COSTS				
#	Item	Detail	Amount	Amount
1	Travel	L. Chaset round trip airfare to Washington D.C. for in person meeting	\$629.60	

		with client to discuss LTPP proceeding. (Attachment 4)			
		<i>Subtotal:</i>	\$629.60	<i>Subtotal:</i>	
		TOTAL REQUEST \$:	\$40,237. 10	TOTAL AWARD \$:	

When entering items, type over bracketed text; add additional rows as necessary.
 *If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.
 **Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. Attachments Documenting Specific Claim and Comments on Part III (Claimant completes; attachments not attached to final Decision):

18	Attachment or Comment #	Description/Comment
	1	Certificate of Service
	2	FOE Time Sheets in Support of Substantial Contribution to D.12-12-010
	3	Justification for Attorney Rates (L. Chaset, T. Lindl, T. Culley)
	4	Receipt for Travel Expenses for L. Chaset

D. CPUC Disallowances, Adjustments, and Comments (CPUC completes):

19	#	Reason

PART IV: OPPOSITIONS AND COMMENTS
 Within 30 days after service of this Claim, Commission Staff
 or any other party may file a response to the Claim (see § 1804(c))

(CPUC completes the remainder of this form)

A. Opposition: Did any party oppose the Claim?	
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If so:

Party	Reason for Opposition	CPUC Disposition

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?	
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If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. Claimant [has/has not] made a substantial contribution to Decision (D.) _____.
2. The requested hourly rates for Claimant’s representatives [,as adjusted herein,] are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses [,as adjusted herein,] are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$_____.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, [satisfies/fails to satisfy] all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$_____.

2. Within 30 days of the effective date of this decision, _____ shall pay Claimant the total award. [for multiple utilities: “Within 30 days of the effective date of this decision, ^, ^, and ^ shall pay Claimant their respective shares of the award, based on their California-jurisdictional [industry type, for example, electric] revenues for the ^ 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 _____, 200__, the 75th day after the filing of Claimant’s request, and continuing until full payment is made.
3. The comment period for today’s decision [is/is not] waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.