Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas and Electric Company for Authority to Provide Customers with Real-Time Energy Meters.	Application 00-07-055 (Filed July 31, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) $3,482.25 in compensation for its contribution to Decision (D.) 01-05-032.

1. Background

On July 9, 2001, TURN filed a request for an award of $3,482.25 for its contribution to D.01-05-032, in which the Commission addressed the implementation by San Diego Gas & Electric Company (SDG&E) of real-time energy meters for its large customers. D.01-05-032 adopts the joint proposal submitted by the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), the California Farm Bureau Federation (Farm Bureau), and SDG&E.

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment regarding today's decision is being waived.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (Unless otherwise noted, all statutory citations are to the Public

Utilities Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's[1] planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

TURN filed its NOI on February 21, 2001 and was found to be eligible for compensation in this proceeding by a ruling dated March 16, 2001. The same ruling also found that TURN had demonstrated its participation, unless compensated, would impose a significant financial hardship. (See §§ 1802(g), 1804(b)(1).)

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. TURN timely filed its request for an award of compensation on July 9, 2001. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the

[1] To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation under the statute be available only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) In today's decision, we use "intervenor" and "customer" interchangeably.

hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> "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 has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. TURN's Contribution to Resolution of Issues

Per § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In typical proceedings, an intervenor seeks to establish "substantial contribution" by linking a specific outcome adopted by the Commission to a

position the intervenor took in prepared testimony or in a brief. But here the record consists only of the utility application, the protests filed by TURN, ORA and the Farm Bureau, the Joint Proposal submitted by SDG&E and those same parties, and the comments to the joint proposal filed by the California Energy Commission. TURN contends, and we agree, that even this limited record sufficiently establishes a substantial contribution to D.01-05-032.

SDG&E originally proposed to install real-time energy meters (RTEMs) for all customers, with large customers the target of the more immediate "Phase 1" and the remaining customers, including TURN's constituents in the residential and small commercial customer class, being phased in over a longer period. As noted in D.01-05-032, TURN's protest to SDG&E's application raised issues regarding the need to ensure the RTEMs make sense for smaller customers before pursuing installation of such meters. After receiving protests from TURN and other parties, SDG&E scaled back its proposal dramatically, focusing only on those customers with average peak demand of at least 100 kilowatts. Further discussions among the parties on this more limited proposal led to the Joint Proposal.

TURN was an active participant in those discussions and made a number of proposals for changing and clarifying the cost recovery opportunity for SDG&E, and for defining the cost recovery and cost allocation issues deferred to another proceeding. Normally, intervenor compensation is for contribution to the <u>resolution</u> of issues, not to their deferral.

However, once SDG&E scaled back its proposal and provided additional detail as to how it planned on pursuing RTEM for its large customers, it became clear that the cost recovery and cost allocation issues were not clearly defined. Therefore deferring those issues on terms that all parties found acceptable

emerged as the approach that would allow the most rapid deployment of the RTEM for large customers. For these reasons, deferring certain issues contributed to the timely and effective resolution of issues in D.01-05-032.

We agree that TURN made substantial contributions to D.01-05-032 in the areas it identifies. D.01-05-032 adopted TURN's proposals in whole or in part through the Joint Proposal.

4. Reasonableness of Requested Compensation

TURN requests $3,482.25 as follows:

Attorney Fees						
Robert Finkelstein	9.5	hours	X	$280	=	$2,660.00
	4.5	hours	X	$140	=	$630.00
				Subtotal	**=**	$3,290.00
Other Costs						
Photocopying Expense					=	$169.20
Postage Costs					=	$ 23.05
				Subtotal	**=**	$192.25
				TOTAL	**=**	$3,482.25

In its request, TURN notes that Finkelstein, who bears primary responsibility for the organization's legal work on electric industry regulatory matters, handled every aspect of this proceeding on behalf of TURN. TURN has provided a daily listing of the specific tasks performed by Finkelstein in connection with this proceeding. TURN claims that the small number of hours claimed (14 hours) reflects TURN's efficiency. Also, TURN notes that an allocation of work activities on an issue-by-issue basis was not attempted for this request due to the nature of the proceeding. We agree that TURN has provided an appropriate level of detail.

TURN requests an hourly rate of $280 for work for Finkelstein performed in 2000, the same rate previously approved by the Commission in D.00-11-002. We agree that this rate is reasonable for this case too. TURN's "Other Costs" of $192.25 are reasonable.

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1803.3, where the Legislature gave the Commission guidance on program administration. (See D.09-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by signing a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation. Here, it is difficult to assign a specific dollar impact to TURN's efforts. However, we find that the benefit of TURN's participation outweighs the small cost of TURN's participation in implementing RTEM, which are an important part of the Commission's strategy for managing the recent problems in California's electric supply.

5. Award

We award TURN $3,482.25, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing September 22, 2001 (the 75th day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

Pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the 30-day comment period for draft decisions is waived because this is a decision on requests for compensation.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.01-05-032.
2. TURN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. TURN contributed substantially to D.01-05-032.
4. TURN has requested an hourly rate for attorney Robert Finkelstein that has already been approved by the Commission.
5. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812 that govern awards of intervenor compensation.
2. TURN should be awarded $3,482.25 for its contribution to D.00-05-032.
3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $3,482.25 in compensation for substantial contribution to Decision 01-05-032.

2. San Diego Gas & Electric Company (SDG&E) shall pay TURN $3,482.25 within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning September 22, 2001 and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding is closed.

5. This order is effective today.

Dated _____, at San Francisco, California.