Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company for Authority to Market Value and Retain the Generation-Related Portions of SSID.	Application 00-05-026 (Filed May 15, 2000)

OPINION AWARDING COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of $11,482.96 in compensation for its contributions to Decision (D.) 01-11-012. TURN's request was unopposed, and TURN has properly documented its request for compensation for all hours claimed by its attorneys and for other, miscellaneous costs.

1. Background

Application (A.) 00-05-026 sought Commission authorization to market value and retain the generation-related portions of its Shop Services and Instrumentation Division (SSID) facility. The application was resolved by Decision (D.) 01-11-012, wherein the Commission allowed the withdrawal of the application due to the change in circumstances in the wholesale electricity market beginning in mid-2000, and the subsequent legislation enacted to address that situation. However, before the withdrawal of the application, Southern California Edison Company (Edison), The Office of Ratepayer Advocates (ORA), and TURN negotiated a comprehensive joint recommendation (JR) on how to address SSID valuation and ratemaking issues—the only aspects of the application protested by ORA and TURN. Before the JR was acted on by the

Commission the Legislature, on February 1, 2001, enacted Assembly Bill (AB) 6X, (Stats. 2001 of the First Extraordinary Session, Ch. 4) that prohibited any sale of the generation-related portion of an electric utility's assets until 2006.

On August 16, 2001, Edison filed a Petition to Withdraw its Application on the ground that in light of AB 6X, it would be more efficient for the Commission, Edison, and all parties to address ratemaking for all of the SSID facility, including the generation-related portions, in a future proceeding. Neither ORA nor TURN opposed the Petition to Withdraw, and on November 8, 2001, in D.01-11-012, the Commission dismissed Edison's Application.

TURN filed its request for an award of compensation on January 8, 2002, within 60 days of the mail date, November 9, 2001, of D.01-11-012. TURN's request is therefore timely pursuant to the requirement of Pub. Util. Code § 1804(c).

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.[1] Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of 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 planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

[1] All statutory citations are to Public Utilities Code unless otherwise noted.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the 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. NOI to Claim Compensation

TURN filed a timely NOI on October 30, 2000. After review of the NOI, the assigned Administrative Law Judge (ALJ, by ruling dated November 17, 2000, found TURN eligible for intervenor compensation. TURN made a suitable showing of significant financial hardship in its NOI.

4. Substantial Contribution to Resolution of Issues

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.[2] 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.[3] Where a party has participated in settlement negotiations and endorses a settlement of some of all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.[4]

Here, Edison proposed to market value (by appraisal) the SSID assets, then retain them as unregulated assets within the regulated utility. ORA filed a protest that did not challenge the proposed market valuation or change in regulation of the SSID facility, but instead questioned certain aspects of the terms and conditions Edison proposed for the underlying appraisal of plant value and future operations as an unregulated branch of the regulated utility.

TURN, on the other hand, by way of a late-filed protest, challenged the notion that market valuation was required for all the SSID assets, since many of the SSID assets also served generation, transmission, and distribution

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[2] Section 1802(h).

[3] The Commission has provided compensation even when the position advanced by the intervenor is rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

[4] *See* D.98-04-059, *mimeo.*, at 41.

functions—and it was only the generation-related assets that needed to be identified and valued.

The parties then began settlement negotiations that proved fruitful and led to the presentation of the JR to the Commission. The JR incorporated many recommendations advanced by TURN, primarily its recommendation that of the $41 million of plant investment and inventory identified in Edison's Application, only $6 million was "generation-only" (*i.e.*, could not be used for distribution or transmission purposes). The remaining $ 35 million of "hybrid" assets would continue to be retained and used by Edison as part of its regulated operations and remain in the rate base and reflected in distribution rates, at least through the next general rate case.

The JR was incorporated into a Draft Decision (DD) adopting the JR, but before the Commission could act on the DD, the Legislature enacted AB 6X, that for all intents and purposes mooted Edison's application. Edison then filed a Petition to Withdraw Application.

TURN responded to Edison's petition agreeing that the proceeding should be dismissed. In addition, TURN asked the Commission to state in its decision that the dismissal was based solely on the new legislation, and did not rely on a Memorandum of Understanding (MOU) Edison had entered into with the California Department of Water Resources (DWR). Although DWR was not a party to the application proceeding, Edison mentioned the MOU in its petition. TURN wanted the Commission to clarify that the MOU did not need to be referenced in the dismissal.

TURN also asked the Commission to acknowledge in its decision that intervenors could still seek compensation, even though the application was terminated before a decision on the merits of the original proposal issued.

D.01-11-012 dismissed the proceeding, A.00-05-026, but the decision also included the specifics requested by TURN. In particular, the decision stated that it was relying on AB X6, not on the MOU, p. 3 and Conclusions of Law 1 and 2, and it specified that the dismissal of the proceeding did not preclude any eligible party from pursuing intervenor compensation. Finding of Fact 2.

TURN did actively participate in the proceeding from the date of its late-filed protest through the final decision, and but for the passage of AB 6X, the JR that would have been presented to the Commission for action would have included many of the suggestions and changes advanced by TURN. TURN's most valued contribution was the concept of the "hybrid" assets, and the realization that Edison only used a small amount of its SSID assets in generation-only activities. The fact that the proceeding was rendered moot by the passage of AB 6X should not, and does not, prevent the Commission from finding that TURN made a significant contribution to the proceeding.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of $11,482.96. Once we establish that an intervenor is eligible for compensation and has made a substantial contribution, we evaluate the reasonableness of the intervenor's request. Specifically, we look at the overall benefits of participation, number of hours claimed, reasonableness of hourly rates, preparation time for the compensation request, and other costs.

5.1 Overall Benefits of Participation

We agree with TURN's argument that its participation helped ensure that Edison's "generation-related" SSID plant continues to serve its varied generation, transmission, and distribution functions as part of the regulated utility. As TURN indicated, although it is difficult to assign a particular value to

the benefit Edison's customers derive from continuing to be served through regulated utility operations rather than through an unregulated arm of a regulated utility (as Edison had proposed in its application), the changes in the wholesale electricity market have caused the State to fundamentally rethink restructuring of electric utility assets.

Another way to view TURN's contribution is that these regulated assets produce gross revenue that is treated as "other operating revenue" subject to the revenue sharing mechanism adopted in D.99-09-070. Under that mechanism, ratepayers are entitled to at least 10% of the gross revenues from the incremental activities using the SSID facilities, which based on the 1998-99 period would be approximately $2-3 million annually. If even only one-fourth of the gross revenues are derived from the "generation-related" SSID assets (under Edison's proposal), $500,000 is still saved. TURN's compensation request is about 4% of that amount, making Turn's participation productive.

5.2 Hours Claimed

TURN documents the claimed hours by presenting a daily breakdown of hours for attorneys Robert Finkelstein, Paul Stein, and Michel P. Florio, and for its expert witness William Marcus, with a brief description of each activity. By way of example, only one hour is ought for Stein, and only .5 hours for Florio. Even TURN's expert, Marcus, is only billing for 1.59 hours. The bulk of the attorney time was spent by Finkelstein responding to Edison's application, preparing for and participating in settlement negotiations, responding to Edison's Petition to Withdraw, and preparing the compensation request (at one-half the hourly rate). The hourly breakdown presented by TURN reasonably supports its claim for total hours.

5.3 Hourly Rates

TURN requests an hourly rate of $280 for work Finkelstein performed in 2000, the same rate previously approved by the Commission for his work in that year in D.00-11-002, and D.01-11-053. TURN is not seeking an increase in hourly rate for the work Finkelstein did in 2001 and 2002 since most of the work done post-2002 was devoted primarily to compensation-related matters. Finkelstein charged one-half of his hourly rate for preparation of the compensation request, which is in accordance with Commission practice.

TURN seeks compensation of $200 per hour for the one hour of attorney time Stein spent on this matter. That is the same rate previously approved in D.01-09-045 for work in 2000. For purposes of this proceeding, Stein's rate for 2000 will serve to establish an appropriate hourly rate for his services.

TURN requests an hourly rate of $310 for the .5 hours of work Florio performed in this proceeding. The Commission has previously approved that same rate for Florio for 2000 in D.00-10-020.

TURN seeks to recover the $214.40 in costs billed to it by JBS Energy, Inc. (JBS), the consulting firm that provided expert witness services on the subjects of alternative valuation and ratemaking approaches for the SSID facility that enabled TURN to participate in this proceeding. The hourly rate of $160 for Marcus' services reflects the actual or "recorded or billed costs" that TURN incurred in retaining his services (§1802(c)). This rate is JBS's standard billing rate during the period when the work was performed. In July 2000, JBS increased its hourly rates by $5 to $10 per hour and the request here reflects that increase. TURN attached an excerpt from a previous pleading, that sets forth the justification for a finding that the increased rate for Marcus is reasonable. The

Commission finds that TURN has made a sufficient showing of the reasonableness of the increases to the hourly rates for the quality of work performed by Marcus, and approves the rate of $160 per hour.

5.4 Other Cost

TURN requests $233.56 for photocopying and postage costs related to the preparation and distribution of its pleadings and testimony. These costs appear to be reasonable.

6. Award

As in all intervenor compensation decisions, we put TURN on notice that 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. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Waiver of Comment Period

This is a decision on a request for compensation pursuant to § 1801 *et seq.;* accordingly under § 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. TURN made a timely request for compensation for its contribution to D.00-11-012**.**

2. TURN was previously determined to be eligible for compensation in this proceeding.

3. TURN contributed substantially to D.01-11-012.

4. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.

5. TURN requests hourly rates for its attorneys that have previously been approved by the Commission.

6. TURN's request for an hourly rate for its expert, reflects a $5 to $10 an hour increase over previously approved rates.

7. TURN requests Commission approval of the increase in the rates charged by its expert.

8. The miscellaneous costs incurred for copying and postage are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§1801-1812 which govern awards of intervenor compensation.

2. TURN should be awarded $11,482.96 for its contribution to D.01-11-012.

3. TURN's request for approval of a rate increase for its expert, as reflected in this proceeding, is granted.

4. Pursuant to Rule 77.7(f)(6) of the Commission's rules of Practice and Procedure, the comment period for this compensation decision may be waived.

5. 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 $11,482.96 in compensation its substantial contribution to Decision 01-11-012**.**

2. Southern California Edison Company (Edison) shall pay TURN the award granted by Ordering Paragraph 1. Payment shall be made within 30 days of the

effective date of this order. If this award is not paid by March 25, 2002, the 75th day after January 8, 2002, the date TURN's request was filed, Edison 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 March 25, 2002, and continuing until full payment is made.

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

   This order is effective today.

   Dated _____, at San Francisco, California.