Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company for Approval of Agreements to Sell Its Interests in Four Corners Generating Station and Palo Verde Nuclear Generating Station.	Application 00-05-024 (Filed May 5, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of $18,370.31 in compensation for contributions to Decision (D.) 01-10-050. That decision granted the petition of Southern California Edison Company (Edison) to withdraw its application to sell its interests in the Four Corners Generating Station and the Palo Verde Nuclear Generating Station.

1. Background

This is a somewhat unusual request for compensation. TURN seeks compensation for work performed in a proceeding that was withdrawn due to the melt-down of the wholesale electricity market beginning in mid-2000 and the subsequent legislation enacted to address that melt-down. Despite this, TURN claims that "there can be no doubt that our participation in this proceeding constitutes a substantial contribution warranting full compensation." (Compensation Request, at 1-2.) TURN filed this request on December 20, 2001, following issuance of D.01-10-050. No party has opposed TURN's request.

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. Pub. Util. Code § 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. TURN has complied with the NOI requirements. 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 or not the customer has made a substantial contribution and the amount of compensation to be paid. 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. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the 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. The Commission has provided compensation even when the position advanced by the intervenor is rejected.[1]

At the outset of this proceeding, parties took one of two positions: either Edison should be allowed to divest its interest in the two generating plants subject to certain conditions, or Edison should not be allowed to divest its interest. Edison and, initially, the Office of Ratepayer Advocates (ORA) fell into the first camp, while TURN, later joined by the Utility Workers Union of America (UWUA), was in the second. The Commission's decision allowed withdrawal of the application because of the intervening enactment of legislation that at least temporarily prohibited the divestiture of Edison's interest in these plants.

At the time Edison filed this application, the Commission had already authorized the utility's divestiture of its fossil-fueled generation assets. The application sought to have the Commission apply the same principles adopted in the earlier divestiture decisions to the utility's ownership interest in Palo Verde

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[1] D.89-03-96 (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).

and Four Corners. ORA originally did not object to the proposed divestiture, but rather challenged some of the terms and conditions of sale and the treatment of sale proceeds.

TURN in July 2000 prepared a late-filed protest that challenged the notion that any further divestiture should take place. Noting that both of these plans were relatively low-cost producers, TURN argued that it would better serve ratepayers' interests to retain the plants, at least in the near term. At the prehearing conference of August 8, 2000, UWUA appeared and generally supported TURN's position. Counsel for ORA also noted concerns with the wisdom of additional sales of generation assets.

On September 21, 2000, TURN and UWUA filed a motion to dismiss the application. The motion argued that it would be foolish to exchange cost-based rates for market rates for plants that operate at relatively low cost at a time when market rates were escalating. The motion also argued that selling the plants could only serve to reduce the reliability of electric supply. In its response to the motion to dismiss, ORA joined the fray, indicating that it now opposed Edison's proposal to sell the two plants. Edison's response argued that the sale of the plants should go forward and that concerns addressed in the motion were either misplaced or could be addressed through mitigation measures.

The Commission did not rule on the motion to dismiss before intervenor testimony was due. Therefore TURN, working with ORA and UWUA, prepared testimony in support of dismissal. The three parties jointly drafted and sponsored two pieces of testimony. The first was the testimony of William Marcus of JBS Energy, which analyzed the benefits of continued retention of these generation plants. The second, presenting testimony of Robert Kinosian

and Farzad Ghazzagh of ORA, addressed associated policy and ratemaking issues.

On January 10, 2001, Administrative Law Judge Barnett issued a ruling stating, "Because of current problems regarding electric deregulation, I believe it is a misallocation of resources of the parties and the Commission to go forward with this application at this time." On that basis, he took the hearings scheduled for late February 2001 off calendar. Shortly thereafter, the California Legislature enacted ABX1-6 which, among other things, prohibits through 2006 any sale of utility facilities for the generation of electricity. In April 2001, Edison entered into a Memorandum of Understanding (the MOU) with the California Department of Water Resources in which the utility confirmed its intention to withdraw the divestiture application.

In August, Edison filed its petition seeking to withdraw the application. TURN filed a response that supported ending the proceeding, but asked the Commission to rely only on ABX1-6 (rather than the MOU) as the basis for termination, and to acknowledge that intervenors may still seek compensation even though the application was withdrawn. The final decision granted Edison's petition to withdraw, specifically relying on ABX1-6 and making no mention of the MOU. It also stated the Commission's intent to "protect the right of eligible parties to request intervenor compensation" (D.01-10-050, at 2.)

In light of the role TURN played in this proceeding, and the fact that the ultimate outcome is the outcome TURN sought to achieve, we believe that TURN made a substantial contribution to D.01-10-050. At the time Edison's application was filed, and at all times through mid-November 2000 (when intervenors served their testimony), there was no way to anticipate the legislation that would end the proceeding. Where, as here, TURN participated in good faith in a

proceeding that was truncated due to circumstance beyond its and the Commission's control, we believe that we should exercise our judgment to find that TURN's "presentation has substantially assisted the commission in the making of its order or decision." (Pub. Util. Code § 1802(h).) Failing to award compensation under these circumstances could only be viewed as the Commission assigning to eligible intervenors the risk that a proceeding might be derailed by subsequent legislative action. This could only chill participation by such groups in the public utility regulation process, an outcome distinctly at odds with Pub. Util. Code § 1801.3(b). Accordingly, we conclude that under the unusual circumstances of this proceeding, TURN's participation constituted a substantial contribution to D.01-10-050 that warrants an award of all of its reasonable costs to achieve that participation.

We find also that there is no unnecessary duplication of work performed by other parties. TURN's initial work did not duplicate the work of others, and it coordinated with ORA and UWUA to avoid overlap when those two parties joined TURN in opposing the proposed sale of generating plants.

4. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of $18,370.31.

Robert Finkelstein, Attorney:

33.0 hours @ $280	$9,240.00
9.5 hours @ $140	1,330.00
Subtotal	$10,570.00

Expert Witness Costs – JBS Energy, Inc.		
William Marcus		
15.17 hours @ $160[2]		$2,402.20
Jim Helmich		
43 hours @ $115		$4,945.00
Subtotal		$7,347.20
Photocopying and postage		$ 453.11
	Total	**$18,370.31**

4.1 Hours Claimed

Robert Finkelstein served as TURN's counsel in this proceeding. A daily listing of his work is attached to the request as Appendix A. TURN's attorney maintained contemporaneous time records, and he states that he reviewed all of the recorded hours in preparing the appendix and included only those that were reasonable for the underlying task. We have reviewed the appendix and find that it reasonably states the attorney time devoted to this proceeding.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services." TURN seeks funding for the work of its attorney and for the work of the JBS Energy consultants.

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[2] The initial 2.5 hours of time was billed at $150 per hour rather than $160. This explains why the total expense for the time is $25 less than the requested hourly rate multiplied by the total number of hours.

Robert Finkelstein. TURN requests an hourly rate of $280 for work its attorney performed in the year 2000, the same rate previously approved by the Commission for his work in that year. (D.00-11-002, D.01-11-053.) Since the attorney's work in 2001 in this proceeding was devoted primarily to compensation-related matters, TURN also proposes using the 2000 rate for the 2001 hours as well. In accordance with Commission precedent, compensation for the hours to prepare this request for compensation is sought at $140, or half the authorized billing rate for 2000. The requested rates are reasonable for purposes of this request.

William Marcus. TURN seeks an hourly rate of $160 for Marcus, principal economist for JBS Energy, who bore primary responsibility for presentation of TURN's testimony on the need to require Edison to retain the electric generation plants. The hourly rate reflects the actual recorded or billed costs that TURN incurred in retaining these services. JBS Energy increased its rates slightly (by $5 to $10 an hour) in July 2000, and work in the latter half of 2000 reflects this increase. We find that these rates are reasonable for a witness with the background and experience of Marcus, and we adopt these rates for the award requested.

James Helmich. TURN seeks an hourly rate of $115 for Helmich, principal engineer for JBS Energy. Helmich's role was the development of reasonable forecasts of future plant operating costs. The Commission in D.99-09-054 approved an hourly rate of $100 for Helmich for work performed in 1997-1998, at the same time noting that the Consumer Services Division had paid an hourly rate of $110 for his work pursuant to a contract the staff had with JBS Energy. Helmich has a master's degree in civil engineering from the University of California, Berkeley and has worked in the filed of energy economics analysis

since 1974, including eight years with the California Energy Commission. We find that the rate sought here is reasonable.

4.3 Other Costs

TURN claims $453.11 for costs relating to photocopying and postage, a reasonable sum which we adopt here.

5. Award

We award TURN $18,370.31 for contributions to D.01-10-050. 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 the 75th day after TURN filed this compensation request (March 5, 2002) and continuing until the utility makes full payment.

6. Waiver of Comment Period

This is a compensation decision pursuant to Pub. Util. Code § 1801. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.01-10-050 as set forth herein.

2. TURN requests hourly rates for its attorney and consultants that have already been approved by the Commission or that are reasonable under the circumstances.

3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

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

2. TURN should be awarded $18,370.31 for contributions to D.01-10-050 in this proceeding.

3. 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 $18,370.31 as set forth herein for substantial contributions to Decision 01-10-050.

2. Southern California Edison Company shall, within 30 days of this order, pay TURN $18,370.31 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on March 5, 2002 and continuing until the full payment has been made.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.