Decision 06-07-011 July 20, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK

This decision awards The Utility Reform Network (TURN) $299,870.35 in compensation for its substantial contributions to Decision (D.) 05-10-042, and for its participation in the related electric utility Procurement Review Groups (PRG) during 2005. This proceeding remains open to address pending electric resource and procurement issues.

Background

In a series of decisions beginning in 2001, the Commission addressed short- and long-term procurement planning policies for California's three largest investor-owned electric utilities (IOUs)[1] to ensure adequate resources for their customers. First, the Commission realized the need for resource adequacy policies and guidelines, and established a framework for resource adequacy requirements (RAR) in D.04-01-050. Later, D.04-10-035 provided further clarification to the RAR policy framework and designated Phase 2 of this

[1] Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

proceeding as the forum for considering procedural steps for implementing an RAR program for 2005. That decision directed Commission staff (Staff) to conduct workshops on technical issues related to implementation of an RAR program. Staff held 19 workshops between November 2004 and April 2005, and issued a Workshop Report on June 10, 2005. The Workshop Report captured the discussions at the workshops and revealed a need for further clarification of RAR policies beyond Phase 2 issues. The Commission directed the parties to provide comments and replies to the Workshop Report. The recommendations and inputs from the workshops became the record for Phase 2. D.05-10-042 resolved issues previously identified as Phase 2, and issues that were raised in the workshops. D.05-10-042 concluded the resource adequacy (RA) portion of the proceeding.

In a related effort, as part of developing policies for the short- and long-term procurement process for California IOUs, the Commission established PRGs in D.02-08-071 to facilitate the expedited review of proposed procurement contracts for each utility. TURN has been a member of PRGs for all three electric utilities.

This compensation award is for TURN's contribution to D.05-10-042 and for its participation in PRGs during 2005.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

(Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

Procedural Issues and Financial Hardship

The PHC in this matter was held on April 30, 2004. TURN timely filed its NOI on June 1, 2004. TURN asserted financial hardship in its NOI.

Section 1802(b)(1) defines a customer as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.

On July 27, 2004, Administrative Law Judge (ALJ) Wetzell ruled that TURN is a customer, pursuant to § 1802(b)(1)(C), and that TURN demonstrated significant financial hardship within the meaning of § 1802(g).

TURN filed its request for compensation on December 23, 2005, within 60 days of D.05-10-042 being issued.[2]

We affirm the ALJ's ruling and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation for this portion of this proceeding.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and

[2] No party opposes the request.

1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[3]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

First, we discuss TURN's specific contributions to D.05-10-042. TURN submits that it participated in almost all of the workshop discussions that took place between November 2004 and April 2005, filed both opening and reply comments to the Workshop Report, and submitted opening and reply comments to the ALJ's Draft Decision (DD). TURN also states that it joined a number of other parties in preparing "joint party" comments at several points in the proceeding. In its request for compensation, TURN points to several portions of D.05-10-042 where the Commission adopted its proposal or referred to its position. For example, TURN points out that the decision accepted TURN's

[3] D.98-04-059, 79 CPUC 2d, 628 at 653.

position to defer certain portions of the RA program beyond 2006. The decision also adopted TURN/SCE proposal to allocate limited delivery capacity out of constrained "generation pockets" on a first-come, first-served basis. TURN also notes the decision adopted a policy with respect to firm liquidated damages contracts similar to the position advocated by TURN. According to TURN, the decision used language similar to its comments to the Workshop Report, and adopted its proposal to require mandatory load migration adjustments in the month-ahead compliance filings. TURN also notes the decision adopted its proposal to limit penalties on non-compliant Load Serving Entities (LSEs) in the first year of the program to one-half of that for the longer-term penalty level.

In addition, TURN points out that several of its positions were adopted by the decision without specific attributions. For example, TURN notes that D.05-10-042 rejected the Alliance for Retail Energy Markets' proposal to allocate a "capacity credit" to non-IOU LSEs for a portion of the capacity of the Department of Water Resources (DWR) contracts and other IOU resources. TURN opposed that proposal. TURN also asserts the decision finds appropriate the use of dispatchable demand response programs up to the program limits, a position advocated by TURN in its comments on the Workshop Report. Other examples provided by TURN include adopting a policy of grandfathering (or "evergreening") inter-tie system allocations for long-term out-of-state capacity commitments, emphasizing the role of this Commission in implementing and enforcing the RA program, supporting a continuation of the Federal Energy Regulatory Commission (FERC) Must-Offer Obligation, and RA treatment of imports, all positions advanced by TURN. TURN also notes the decision endorsed a California Energy Commission "plausibility check" on individual LSE load forecasts, which was responsive to the concern that TURN raised in its

comments to the Workshop Report and the DD. Lastly, TURN submits it made a substantial contribution to the evolution and clarification of the "top-down" approach adopted for measuring LSE's RA compliance.

The second part of TURN's request for compensation relates to its participation in PRGs in 2005. TURN believes that PRG participation is important and beneficial to the procurement process and contributes "to the ongoing dialogue between non-market participants and the utilities over appropriate steps to implement various evolving procurement policies." TURN describes the nature of its participation in PRGs in broad terms, which involved review of the proposed electric and gas hedging strategies, transactions and supply plans, and providing advice to PG&E, SCE, and SDG&E on resource solicitation for 2006. TURN also notes that in PG&E's long-term Request for Offer (RFO), it worked with the new Independent Evaluator (IE) to ensure that the utility did not favor its own resources over those owned by others.

Regarding TURN's request for contribution to D.05-10-042, we find that TURN's detailed description of its contribution to the workshop process and the RA policies adopted by the Commission is accurate. TURN participated in the workshop discussions that took place between November of 2004 and April 2005, and contributed to the process of identifying and developing options for RARs by providing proposals on its own or jointly with other parties. The Workshop Report prepared by Staff contains discussions of TURN's positions and reflects TURN's contribution to the workshop process. TURN's participation in the workshop process assisted the Commission in adopting RA policies in D.05-10-042.

Further, TURN provided opening comments and replies to the Workshop Report which became part of the record for D.05-10-042. D.05-10-042 adopted

many of TURN's positions that were discussed in TURN's comments to the Workshop Report. Throughout the proceeding, TURN continued to provide comments to various Commission rulings and pleadings, joined parties in preparing "joint party" comments, and provided comments and reply comments to the ALJ's DD. D.05-10-042 adopted several of TURN's proposals either fully or in part. In areas where TURN's position was not adopted, the Commission benefited from TURN's analysis and its contribution to the discussion. Overall, we find that TURN made a substantial contribution to D.05-10-042.

Regarding TURN's participation in the PRGs, D.02-10-062 (interim long-term procurement contracts) states that "participation in the procurement review process . . . by non market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding."[4] TURN has been an active member of PRGs and has continued to contribute to the review process for utility procurement activities through review of proposed electric gas and hedging strategies, and transactions and supply plans, and by providing advice to the IOUs on resource solicitation for 2006. TURN participated in most PRG meetings, has conferred with the utilities on resource solicitation issues, and worked with the IE in the PG&E RFO process to develop appropriate utility procurement practices. TURN's participation in PRGs provided an overall benefit to the development of procurement process for the three utilities. Therefore, we find that TURN made a substantial contribution to this proceeding through its participation in the PRGs.

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[4] D.02-10-062, p. 4.

TURN states that it collaborated closely with the other parties involved in the PRGs and, as the representative of small consumers, its work was unique in the proceeding. We agree with TURN that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other parties.

After we have determined the scope of a customer's substantial contribution, we look at whether the compensation requested is reasonable.

Reasonableness of Requested Compensation

TURN requests $300,257.85 for its participation in this portion of the proceeding and its participation in PRG, as follows:

Attorney Fees:

Michel P. Florio	370.25	hours X	$470	=	$174,017.50
	12.00	hours X	$235 (comp)	=	$ 2,820.00
Matthew Freedman	27.00	hours X	$270	=	$ 7,290.00
Marcel Hawiger	7.75	hours X	$320	=	$ 2,480.00
			Subtotal	=	**$186,607.50**

Expert Consultant Fees:

Kevin Woodruff	545.25	hours X	$200	=	$109,050.00
			Subtotal	=	**$109,050.00**

Other Costs:

Photocopying expense	=	$ 582.80
Postage costs	=	$ 71.51
Telephone, Fax and Internet Access	=	$ 286.01
Travel/Parking	=	$ 1,810.02
Lodging/Meals	=	$ 1,850.01
Subtotal		**$ 4,600.35**
TOTAL	**=**	**$300,257.85**

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN's request for award of compensation contains a daily breakdown of the hours for TURN's attorneys and its consultant accompanied by a brief description of each activity. The hourly breakdown reasonably supports TURN's claim for total hours.

Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

TURN seeks the following hourly rates for its attorneys and consultant for 2004 and 2005:

Name	**2004 Hourly Rate**	**2005 Hourly Rate**
Michel Florio	$470	$470
Matthew Freedman	$270	$270
Marcel Hawiger	$270	$320
Kevin Woodruff	$200	$200

The requested hourly rates for work performed in 2004 by all TURN's attorneys and its consultant were previously approved in D.05-01-029, D.05-06-049, D.05-04-031, and D.04-08-042 and we adopt those rates here.

For work performed in 2005 by Florio, Freedman, and Woodruff, TURN seeks compensation using the authorized rates for 2004. This request conforms to D.05-11-031[5] and we adopt these rates here.

For work performed by Hawiger in 2005, TURN requests an hourly rate of $320, a $50 per hour increase over the authorized 2004 rate. In D.06-04-029 and D.06-04-065, we previously adopted a rate of $270 for Hawiger for 2005 work. This rate is within the hourly rate guidelines established in D.05-11-031, and we adopt that rate here. TURN's request is decreased by $387.50 to reflect Hawiger's adopted 2005 hourly rate.

Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

TURN states that "In a wide-ranging policy proceeding such as this one, achieving even a ballpark estimate of the benefits of an intervenor's participation is a daunting task."[6] Nonetheless, TURN submits that its work on RA issues and

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[5] D.05-11-031 adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005.

[6] TURN's Request for Award of Compensation in R.04-04-003, p. 8.

capacity credits for DWR contracts alone saved the ratepayers millions of dollars. We agree with TURN and the characterization of its participation in the proceeding. Phase 2 dealt with many complex technical issues all of which were important for timely completion of that phase and for establishing a workable RAR in 2005. The Commission identified the workshops as the centerpiece of Phase 2 and noted that the resource adequacy track of this rulemaking would develop in the workshop and related comments and replies. TURN was an active participant in this entire process. It participated in the workshops and provided valuable insight in identifying issues that needed resolution. TURN also assisted the Commission in achieving a better understanding of the issues by providing comments and replies. TURN's participation in PRGs also assisted to this end. Overall, we find that TURN's participation yielded benefits to the ratepayers beyond the costs it incurred.

Direct Expenses

The itemized direct expenses submitted by TURN include costs for travel, lodging, meals, photocopying, postage, telephone, fax, and Internet access, and total $4,600.35. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed, and we find these costs reasonable.

Award

We award TURN $299,870.35. This calculation is based on the hourly rates and business expenses described above.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on

March 8, 2006, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SCE, and SDG&E to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2005 calendar year, the year in which the proceeding was primarily litigated.

We remind all intervenors that Staff may audit their records related to the award and that intervenors 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 requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

President Michael R. Peevey is the Assigned Commissioner, and Mark S. Wetzell is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.05-10-042 and the related PRGs, as described herein.

3. TURN requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

4. TURN requested related expenses that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is $299,870.35.

6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-10-042 and participation in PRGs.

2. TURN should be awarded $299,870.35 for its contribution to D.05-10-042 and participation in PRGs.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $299,870.35 as compensation for its substantial contributions to Decision 05-10-042, and for its participation in the related Procurement Review Groups.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison

Company shall pay TURN their respective shares of the award. Each utility's share shall be calculated based on its California-jurisdictional gas and electric revenues for the 2005 calendar year. 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 March 8, 2006, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

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

This order is effective today.

Dated July 20, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0607011
Contribution Decision(s):	D0510042, and related Procurement Review Groups
Proceeding(s):	R0404003
Author:	ALJ Wetzell
Payer(s):	Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	12/23/2005	$300,257.85	$299,870.35		Failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	$470	2004/2005	$470
Matthew	Freedman	Attorney	The Utility Reform Network	$270	2004/2005	$270
Marcel	Hawiger	Attorney	The Utility Reform Network	$270	2004	$270
Marcel	Hawiger	Attorney	The Utility Reform Network	$320	2005	$270
Kevin	Woodruff	Consultant	The Utility Reform Network	$200	2004/2005	$200

(END OF APPENDIX)