Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) for Approval of Program Year 2000 and 2001 Energy Efficiency Program Plans, Budgets, and Performance Award Mechanism.	Application 99-09-049 (Filed September 27, 1999)
Application of Pacific Gas and Electric Company for Approval of Program Years 2000 and 2001 Energy Efficiency Programs (U 39 M).	Application 99-09-050 (Filed September 27, 1999)
Compliance Application of San Diego Gas & Electric Company (U 902 M) for Approval of 2000 and 2001 Energy Efficiency Programs, Budgets, Performance Incentive Structure.	Application 99-09-057 (Filed September 27, 1999)
Compliance Application of Southern California Gas Company (U 904 G) for Approval of 2000 and 2001 Energy Efficiency Programs, Budgets, Performance Incentive Mechanism.	Application 99-09-058 (Filed September 27, 1999)

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK (TURN)

This decision awards The Utility Reform Network (TURN) $31,042.14 for its contribution to Decision (D.) 99-12-053, D.00-07-017 and D.03-07-019, Energy Resolution E-3687, and related rulings. This figure represents $725 less than

TURN's requested amount of $31,767.14 because we have reduced the requested hourly rate of $90 for paralegal Hayley Goodson to an $80 rate.

1. Background

The decisions, resolution and rulings for which TURN seeks compensation all relate to investor owned utility (IOU)[1] energy efficiency programs the Commission authorized for 2000 and 2001.

In D.99-12-053, the Commission authorized the IOUs' budgets for energy efficiency plan year (PY) 2000 on an interim basis, subject to mid-year review. The Commission deferred any decision on the utilities' proposed milestones and award levels for PY 2000 and 2001 programs.[2] After extensive discovery, the Commission held hearings and invited pleadings, culminating in D.00-07-017.

In D.00-07-017, the Commission found that the IOUs "ha[d] not provided sufficient information to demonstrate that they ha[d] complied with our directives in D.99-08-021." The Commission only authorized programs for PY 2000 and ordered the IOUs to file new applications for PY 2001. The decision ordered several workshops to plan for PY 2001. Ultimately the Commission approved the IOUs' PY 2001 plans (reflected in A.00-11-037 *et seq.)* in D.01-01-060.[3]

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

[2] Milestones were performance targets the Commission required IOUs to meet for their PY 2000 programs. Award levels were incentives awarded to the IOUs if they met target energy savings in the energy efficiency programs.

[3] TURN does not seek compensation for its contribution to D.01-01-060 here, because it has already received compensation in the amount of $53,365.42 for its contribution to that decision. D.01-12-008. TURN clarifies that none of the expenses or costs already

Footnote continued on next page

D.00-07-017 also implemented the "Summer 2000 Initiative," requesting program applications from interested parties to utilize available excess funds for immediate energy and demand reduction, and authorizing the assigned Administrative Law Judge (ALJ) and Assigned Commissioner to select and approve programs. The ALJ and Commissioner selected such programs by a ruling dated August 21, 2000.

E-3687,[4] dated August 3, 2000 related to one aspect of SCE's energy efficiency program proposal, and found that the program should be considered along with the Summer 2000 Initiative applications.

TURN claims it participated in all aspects of the foregoing proceedings, including filing protests, participating in workshops, communicating in detail with the IOUs and commenting on decisions and on the Summer 2000 Initiative process and selections. It claims its recommendations were a substantial contribution to the Commission's decision to require substantial additional baseline data, modify the milestones for PY 2000, require the IOUs to refile applications for PY 2001, and require Edison to have the program that was the subject of E-3687 considered as part of the Summer 2000 Initiative.

No party opposes TURN's request for compensation.

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

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submitted for compensation in connection with A.01-11-037 *et seq.*, are in the compensation request we decide here.

[4] TURN erroneously cites Resolution E-36**3**7 on the cover of its motion, but later cites the correct number, E-36**8**7.

§§ 1801-12. (Unless otherwise noted, all statutory citations are to the Public Utilities Code.)

A. Notice of Intent

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC) 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.

The assigned ALJ found TURN to be eligible for compensation in this proceeding by ruling dated December 9, 1999.

B. Timeliness of Compensation Request

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. The Commission issued D.03-07-019, closing out the PY 2000-2001 applications, on July 11, 2003.[5] TURN timely filed its request for an award of compensation on September 9, 2003.

3. Substantial Contribution to Resolution of Issues

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

[5] Although the Commission issued D.99-12-053 and D.00-07-017 more than 60 days prior to TURN's filing, it was not until we issued D.03-07-019 that we closed the applications for which TURN seeks compensation here.

> 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.

As provided in § 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.[6]

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[6] 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).

TURN alleges it made a substantial contribution to D.99-12-053 because it supported the Commission's decision not to authorize the IOUs' performance award mechanism, including proposed program milestones and award levels until a later time.

TURN claims a substantial contribution to D.00-07-017 because it participated in workshops addressing various program design and milestone mechanism issues for PY 2001. TURN also conducted cross-examination during evidentiary hearings, and filed pleadings. It notes that the Commission generally agreed with TURN's analyses and adopted its approximately 10 recommendations.[7]

TURN alleges it substantially contributed to the portion of D.00-07-017 relating to the Summer 2000 Initiative because it provided comments on the decision and suggested criteria for evaluating and selecting programs. When the programs were selected in the August 21, 2000 ruling,[8] the ALJ and Assigned Commissioner adopted at least one of TURN's suggestions, although TURN acknowledges "it is difficult to determine precisely the effect of TURN's comments . . . ."[9] There is no indication that the ruling rejected TURN's suggestions. Given the provision of § 1804(h) that, "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

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[7] The recommendations related generally to milestones, the use of workshops, incentive levels and types, surveys for trainings and seminars, and IOU submission of data to support their programs.

[8] We may award compensation for work related to rulings. D.02-05-005, *mimeo.*, at 5-6.

[9] Request for Compensation at 8.

commission may award the customer compensation for all reasonable advocate's fees," we award TURN its expenses in full.

Finally, TURN claims it contributed substantially to E-3687 because the Commission partially adopted TURN's recommendation by allowing SCE a choice between proceeding as TURN suggested or in an alternative manner. We may award compensation for work related to Commission Resolutions.[10]

We agree based on the foregoing summary that TURN made a substantial contribution to the foregoing decisions, resolution and ruling. We address the reasonableness of the compensation amount TURN requests in the next section.

4. The Reasonableness of Requested Compensation

TURN requests $31,767.14, as follows:

Summary

Expense Category	**Amount**
Attorney Time	$31,016.25
Direct Expenses	$750.89
TOTAL	**$31,767.14**

Detail

Attorney			**Substantive Issue Work**		**Compensation Related**		**Total Hours**		**Percent Claimed**	**Total Compensation**
	Billing Period	Hourly Rate	Hours Expended	Hours Claimed	Hours Expended	Hours Claimed	Expended	Claimed		
Marcel Hawiger	2003	$200	0.00	0.00	17.25	8.63	17.25	8.63	50.00%	$1,725.00
	2002	$200	0.95	0.95	0.00	0.00	0.95	0.95	100.00%	$190.00
	2001	$190	0.50	0.50	0.00	0.00	0.50	0.50	100.00%	$95.00
	2000	$180	90.25	90.25	0.00	0.00	90.25	90.25	100.00%	$16,245.00
	1999	$170	34.00	34.00	1.25	0.63	35.25	34.63	98.23%	$5,886.25
Hayley Goodson	2000	$90	13.50	13.50	0.00	0.00	13.50	13.50	100.00%	$1,215.00
	1999	$90	59.00	59.00	0.00	0.00	59.00	59.00	100.00%	$5,310.00

[10] D.98-11-049.

Robert Finkelstein	2000	$280	1.25	1.25	0.00	0.00	1.25	1.25	100.00%	$350.00
TOTAL							**217.95**	**208.7**	**95.76%**	**$31,016.25**

A. Overall Benefits of Participation

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 § 1801.3, where the Legislature gave the Commission guidance on program administration. 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 assigning 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.

TURN states that the main outcome of the PY 2000 proceeding was that the Commission agreed with TURN that the utilities needed to provide substantially enhanced data and revised milestones. TURN concedes that it is impossible to quantify these policy changes. TURN notes, however, that changes in the milestones could reduce the amount of shareholder incentives – *i.e.*, profits – the IOUs are allowed to collect. While the proceeding assigning such incentives is still pending, we find that efforts to require the IOUs to better document their programs through data and milestones present the potential for ratepayer savings. We therefore find that TURN's efforts were productive.

B. Hours Claimed

TURN documents its claimed hours by presenting a daily breakdown of the hours of its attorneys and paralegal, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.[11] Since we find that TURN's contribution on all issues was substantial, we need not exclude from TURN's award compensation for certain issues. However, we note that TURN broke down its efforts by issue; had we needed to eliminate certain issues from the award, this breakdown would have facilitated the process.

C. Hourly Rates

TURN seeks $31,016.25 for attorney time.[12]

1. Attorney Hawiger

TURN seeks hourly rates for attorney Marcel Hawiger for 1999, 2000, 2001 and 2002 that have been previously approved by the Commission in D.00-04-007,[13] D.01-03-030, D.01-10-008, and D.02-09-040 respectively. Therefore, we allow those same rates here.[14]

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[11] As the Commission requires, TURN seeks compensation at half the usual hourly rate for hours devoted to the preparation of this compensation request. TURN Request at 23 n.14 & Attachment A.

[12] This figure includes a disallowance of 50 percent for compensation-related work, as the Commission requires.

[13] TURN erroneously cited D.99-04-007.

[14] The rates are as follows: 1999: $170, 2000: $180, 2001: $190, and 2002: $200. TURN seeks the 2002 rate of $200 for Mr. Hawiger's work on the compensation request in 2003, at half the rate in accordance with Commission requirements.

2. Attorney Finkelstein

TURN seeks the same $280 hourly rate for attorney Robert Finkelstein for 2000 (the only year for which he claims time) that the Commission approved in D.00-11-002. We allow the same rate here.

3. Hayley Goodson

Hayley Goodson is now an attorney, but was not one at the time she performed the work on the case, in 1999 and 2000. TURN asks that we adopt a $90 hourly rate for her work in those years.

According to TURN, Ms. Goodson assisted in this proceeding by conducting independent work related to both program design and the shareholder incentive mechanism. She performed work that fits the "paralegal" category for intervenor compensation.

According to TURN, Ms. Goodson joined the organization as a legal assistant in September of 1998. Her role expanded during 1999 to include substantive work on energy efficiency, primarily focusing on the efficiency milestones. She contemporaneously assisted with TURN's telecommunications advocacy, conducting a study on low volume calling plans and presenting testimony on her findings. Ms. Goodson has since received a J.D. from UC Berkeley and recently assumed her new duties for TURN as a staff attorney.[15] Ms. Goodson worked for TURN as a law clerk in 2002.[16]

TURN claims the $90 hourly rate is comparable to market rates charged by other intervenors for work performed by paralegals, law clerks or

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[15] Ms. Goodson's current resume is attached in Appendix C to TURN's request.

[16] Ms. Goodson's resume characterizes her position in 2002 as a legal intern, which we interpret to be the same as a law clerk.

advocates. For example, TURN states, the Commission adopted an hourly rate of $100 and $135 for NRDC "advocates" Sheryl Carter and Peter Miller for work conducted in 1995-1997. D.98-08-016. The Commission adopted an hourly rate of $100 for 1997 work of a law clerk. D.00-02-044. The Commission adopted an hourly rate of $75 for 1997-99 work of a paralegal. D.00-09-068. More recently, TURN claims, the Commission adopted an hourly rate of $90 for interns performing work in 2001. D.03-02-023.[17] The Commission adopted an hourly rate of $75 and $80 for paralegal work conducted in 2000 and 2001. D.02-09-003.

TURN suggests that a $90 rate for 1999 and 2000 is reasonable and appropriate for a paralegal with Ms. Goodson's training and experience. We disagree.

First, TURN erroneously cites D.03-02-023 as allowing a $90 rate for interns performing work in 2001. We actually rejected the $90 rate requested and awarded a $70 rate:

> Our review of this work shows that the work of these interns is not as complex as the work performed by Greenlining/LIF's senior analyst, Jose Hernandez, which was compensated at a rate of $ 75 per hour in D.02-05-011 for 2000. Therefore, we will adopt a rate of $ 70 per hour for both Flores and Hartigan for 2001.[18]

We believe that the appropriate comparison for Ms. Goodson is other paralegals, not advocates, who may have significant education and training in non-law-related fields,[19] and not law clerks or legal interns, who are usually

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[17] This claim is incorrect, as we explain below.

[18] 2003 Cal. PUC LEXIS 104, at *17.

[19] For example, we found in 1996 that Peter Miller, whom TURN cites as an example, had a Masters Degree in Public Administration and over 11 years of related experience.

Footnote continued on next page

already in law school. In D.03-03-031, we adopted a $75 hourly rate for 1999 and 2000 for paralegal Jose Hernandez, performing work for the Greenlining Institute and the Latino Issues Forum. In D.00-04-011, we detailed Mr. Hernandez's background:

> [H]e is a 1998 graduate of the University of California at Berkeley. He is a Senior Policy Analyst at Greenlining Institute and Latino Issues Forum, where he has been involved in educating community leaders, formulating energy and telecommunications policies for limited-English speaking and vulnerable populations, and in advocating for those policies before the Commission and the Legislature. In the past, we have awarded compensation for similar services performed by recent college graduates at $ 75/hour. (*See, e.g.,* D.96-08-040, D.98-04-025, and D.98-12-048.) It is reasonable to establish an hourly rate for services performed by Hernandez in this proceeding at $75.[20]

According to her resume (Appendix C to TURN's request), Ms. Goodson graduated from Brown University in 1996. She worked as a tenant counselor and community educator and advocate at the Louisville Tenants Association from 1996-1998, and also as a clinical teaching associate at the University of Louisville Medical School during the same period. She worked as a legal intern at the Maine Civil Liberties Union for the Summer 2001. She started work at TURN in 1998 and has held the positions of legal assistant,

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D.96-08-040, 1996 Cal. PUC LEXIS 859, at *50, 67 CPUC 2d 562. We stated in the same 1996 decision that "Ms. Carter earned an MA in public affairs from the University of Minnesota in 1993. She has been with NRDC since September of 1995, having worked previously for energy-related public interest organizations in the state of Minnesota, in various capacities since 1990." 1996 Cal. PUC LEXIS 859, at *74. Their experience and education is far greater than that of Ms. Goodson.

technical (computer) support, legal intern, and, since September 2003, staff attorney at that organization.

While we do not have information to compare Ms. Goodson's and Mr. Hernandez's work experience, Ms. Goodson has two more years of post-college work experience, much of which is law-related. This justifies a slightly higher rate for Ms. Goodson for 1999-2000 than we have awarded for Mr. Hernandez. We will award Ms. Goodson $80 per hour for her work in 1999 and 2000, but reject the claimed $90 rate.

D. Costs

TURN requests $750.89 for administrative costs associated with its work in this proceeding. The expenses are for photocopies, telephone charges and postage, and are reasonable.

5. Award

We award TURN $31,042.14, as follows and as shown in Appendix A to this decision:

Attorney			**Substantive Issue Work**		**Compensation Related**		**Total Hours**		**Percent Claimed**	**Total Compensation**
	Billing Period	Hourly Rate	Hours Expended	Hours Claimed	Hours Expended	Hours Claimed	Expended	Claimed		
Marcel Hawiger	2003	$200	0.00	0.00	17.25	8.63	17.25	8.63	50.00%	$1,725.00
	2002	$200	0.95	0.95	0.00	0.00	0.95	0.95	100.00%	$190.00
	2001	$190	0.50	0.50	0.00	0.00	0.50	0.50	100.00%	$95.00
	2000	$180	90.25	90.25	0.00	0.00	90.25	90.25	100.00%	$16,245.00
	1999	$170	34.00	34.00	1.25	0.63	35.25	34.63	98.23%	$5,886.25
Hayley Goodson	2000	$80	13.50	13.50	0.00	0.00	13.50	13.50	100.00%	$1,080.00
	1999	$80	59.00	59.00	0.00	0.00	59.00	59.00	100.00%	$4,720.00
Robert Finkelstein	2000	$280	1.25	1.25	0.00	0.00	1.25	1.25	100.00%	$350.00
TOTAL							**217.95**	**208.7**	**95.76%**	**$30,291.25**

[20] 2000 Cal. PUC LEXIS 190, at *17.

We disallow $725.00 of TURN's award based on the adoption of an $80 hourly rate for Ms. Goodson for 1999-2000 rather than the requested rate of $90.

The calculation is as follows:

Person	Years	Request	Award	Total Hours	Compensation Requested	Compensation Awarded
Hayley Goodson	2000	$90/hour	$80/hour	13.50	$1,215.00	$1,080.00
	1999	$90/hour	$80/hour	59.00	$5,310.00	$4,720.00
					Request Total: $6,525.00	**TOTAL $5,800.00**
					Disallowed $725.00	

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 its compensation request and continuing until full payment of the award is made. We allocate responsibility to pay the award 25-25-25-25 percent among PG&E, SCE, SoCalGas and SDG&E. Each shall pay $7,760.53 plus interest as set forth in this decision.

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. 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.

6. Waiver of Comment

Pursuant to 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 may be waived because this is an intervenor compensation decision.

7. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.99-12-053, D.00-07-017 and D.03-07-019, Energy Resolution E-3687, and related rulings.

2. TURN has requested hourly rates for attorneys Hawiger and Finkelstein that are consistent with rates we have approved in prior Commission decisions.

3. TURN has requested hourly rates for paralegal Goodson that are inconsistent with paralegal rates we have awarded in other decisions.

4. The costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-12 which govern awards of intervenor compensation.

2. TURN should recover compensation for its attorney and paralegal fees.

3. TURN should recover $80 per hour for Goodson's work in 1999-2000, rather than the requested $90 hourly rate.

4. TURN should be awarded $31,042.14 for its contribution to D.99-12-053, D.00-07-017 and D.03-07-019, Energy Resolution E-3687, and related rulings.

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) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and TURN is found eligible for compensation in this proceeding. TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

2. TURN is awarded $31,042.14 in compensation for its substantial contribution to Decision (D.) 99-12-053, D.00-07-017 and D.03-07-019, Energy Resolution E-3687, and related rulings.

3. Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), Southern California Gas Company (SoCalGas) and Southern California Gas and Electric Company (SDG&E) shall each pay TURN 25 percent of the award ($7,760.53 each) within 30 days of the effective date of this order. PG&E, SCE, SoCalGas and 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 H.15, with interest, beginning November 18, 2003, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

4. These proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D.99-12-053, D.00-07-017 and D.03-07-019, Energy Resolution E-3687
Proceeding(s):	A.99-09-049, A.99-09-050, A.99-09-057, A.99-09-058
Author:	Thomas
Payer(s):	Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), Southern California Gas Company (SoCalGas) and Southern California Gas and Electric Company (SDG&E)

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network (TURN)	September 9, 2003	$31,767.14	$31,042.14	Hourly rate for Hayley Goodson set at $80 for 1999-2000 rather than requested $90

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	TURN	$200	2003	$200
Marcel	Hawiger	Attorney	TURN	$200	2002	$200
Marcel	Hawiger	Attorney	TURN	$190	2001	$190
Marcel	Hawiger	Attorney	TURN	$180	2000	$180
Marcel	Hawiger	Attorney	TURN	$170	1999	$170
Robert	Finkelstein	Attorney	TURN	$280	2000	$280
Hayley	Goodson	Paralegal	TURN	$90	2000	$80
Hayley	Goodson	Paralegal	TURN	$90	1999	$80