Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into Distributed Generation.	Rulemaking 99-10-025 (Filed October 21, 1999)

OPINION ON REQUESTS FOR COMPENSATION BY UTILITY CONSUMERS' ACTION NETWORK AND NATURAL RESOURCES DEFENSE COUNCIL FOR CONTRIBUTIONS TO DECISION 03-02-068 AND THE UTILITY REFORM NETWORK FOR CONTRIBUTIONS TO DECISIONS 01-07-027 AND 03-02-068

1. Summary

This decision grants $20,962.47 to Utility Consumers' Action Network (UCAN) and $13,418.75 to Natural Resources Defense Council (NRDC), for substantial contributions to Decision (D.) 03-02-068. The Utility Reform Network (TURN) is awarded $108,319.75 for its contributions to D.01-07-027 and D.03-02-068.

2. Background

In D.00-12-037, we adopted improved interconnection tariff rules for Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE). In D.01-07-027, we addressed rules and policies for standby rates for onsite generation facilities, i.e., facilities located on, or in close proximity to, the property of the customer(s) whose load the facilities are designed to serve. In D.03-02-068, we completed our

rulemaking and established policies for ownership and operation of distributed generation and their integration into utility planning and operation of the distribution grid. We found that there was no need for restrictions on distributed generation ownership. Distributed generation owners will only be eligible for compensation for deferring distribution system upgrades in limited circumstances, and only if the distributed generator offers physical assurance. Also, because almost every retail sale utilizes both the distribution and transmission networks (even those that appear to stay within a single circuit), we did not adopt a distribution-only tariff. Finally, we stated our intention to open a new rulemaking related to distributed generation.

Intervenors seek compensation for their contributions to D03-02-068. TURN also seeks compensation for its contributions to D.01-07-027. All intervenors were found to be eligible customers to file a request for compensation in a ruling by the assigned Administrative Law Judge on January 20, 2000.

3. 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 to claim compensation within prescribed time periods. As noted above, all intervenors must file timely Notices. The Notice must present information regarding the nature and extent of the customer's planned participation and an itemized

[1] All statutory citations are to the Public Utilities Code.

estimate of the compensation the customer expects to request.[2] Also, to be eligible for compensation, the customer must show that it would suffer "significant financial hardship" (as defined in § 1802(f)) if it were to participate in our proceeding without an award compensating it for its reasonable costs of participation. The customer's Notice may contain that showing, in which case the Notice may also request a finding of eligibility.

Related code sections address requests for compensation filed after a Commission decision is issued. 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,

> …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

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[2] To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

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.

3.1 Timeliness of Requests

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. D.03-02-068 was issued on March 5, 2003. The sixtieth day (May 4, 2003) was a Sunday, so Requests were due on May 5, 2003. UCAN's request for compensation was filed on March 24, 2003. TURN's request was filed on May 5, 2003. NRDC's request was filed on May 5, 2003. All requests were timely.

4. Substantial Contribution to Resolution of Issues

Pursuant to § 1802(h), a party may make a substantial contribution to a decision in 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 D.98-04-059, the Commission noted that an element of a customer's demonstration of "substantial contribution" is a showing that the customer's participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration.[3] D.98-04-059 explained that participation must be productive in the sense that the costs of

[3] *See* D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.

participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the ratepayer benefits of their participation. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

4.1 UCAN's Contribution to Resolution of Issues

UCAN asserts that it made a substantial contribution in three areas: the conceptual benefits of distributed generation, impediments to deploying distributed generation, and the design of a customer education program. The first two issues are fundamental to adopting a policy decision for the ownership and operation of distributed generation. UCAN focused attention on ratepayer benefits, as shown by its suggestion (along with TURN, NRDC, and the utilities) of principles to consider in developing a methodology to assign a value to any system benefits from deploying distributed generation resources. UCAN (and NRDC) further argued for the role of distributed generation resources to contribute to meeting peak energy demands in the near future. UCAN advocated independent education of customers about distributed generation. Although the Commission did not adopt UCAN's proposal, it did adopt alternative education efforts that were better informed as a result of UCAN's efforts and thus UCAN made a substantial contribution. UCAN does not claim any costs associated with its joint sponsorship of testimony on rate design issues.

4.2 TURN's Contribution to Resolution of Issues

TURN alone seeks compensation at this time for its contribution to D.01-07-027, an interim decision adopting standby rate design policies. TURN was a significant voice in the proceeding and its arguments substantially

influenced the Commission's interim decision. For example, TURN took a position arguing in support of reflecting the diversity amongst customers and the reliability of distributed generation facilities when determining standby charges. Additionally, TURN's proposal to use real-time energy prices for energy supplied to standby customers was also adopted.

In D.03-02-068, TURN was an important contributor to at least two critical decision elements: the finding that distributed generation has the potential to reduce peak demand and that distributed generation can temporarily defer the need for distribution upgrades in some locations. TURN's positions also directly affected the policy decisions for distribution planning where the Commission found that distributed generation alternatives must be considered in and properly evaluated when compared to traditional utility distribution infrastructure investments. TURN made a substantial contribution.

4.3 NRDC's Contribution to Resolution of Issues

NRDC was an active participant making a significant contribution to four areas, (1) potential benefits of distributed generation, (2) system planning issues, (3) distributed generation ownership and control, and (4) rate design issues. NRDC was also critical to the discussion of distributed generation's place in system planning; in conjunction with other parties, it caused the Commission to carefully consider the issue even though the decision declined to adopt the process advocated by NRDC. NRDC actively participated in Energy Division and California Energy Commission (CEC) workshops on planning and ownership issues. Lastly, NRDC was active in the rate design issue discussions, both individually and through its sponsorship of joint testimony with TURN and UCAN. NRDC has demonstrated that it made a substantial contribution.

5. Reasonableness of Requested Compensation

5.1 UCAN's Request

UCAN notes that the amount it claims here is less than the estimate it provided in its Notice. UCAN attributes the lower cost of participation to two primary factors: working jointly with other intervenors, and not seeking recovery for hours spent on establishing a "cap proposal." UCAN did not separate its hours between issues because it states that its narrow focus resulted in its time being spent simultaneously on all issues.

5.1.1 Hours Claimed

Table 1 shows the requested hours, adjusted for two errors. First, arithmetic errors have been corrected. Second, UCAN neglected to separate out time spent on intervenor compensation matters and charge it at half the approved hourly rate.[4]

[4] Preparation of the Notice and Request are normally compensated at 50% of the rate for other professional work. This can be done arithmetically either by halving the hours or halving the hourly rate. This decision halves the rate. In email communication with the ALJ, UCAN acknowledged that it did not reduce the rate for compensation-related time.

Table 1

Advocate	Year	Hours	Rate	Total
Shames	1999	1.4	$195.00	$ 273.00
Shames- comp/travel	1999	2.3	$ 97.50	$ 224.25
Shames	2000	77.3	$195.00	$15,073.50
Shames- comp/travel	2000	16.7	$ 97.50	$ 1,628.25
Shames- comp/travel	2003	3.0	$ 97.50	$ 292.50
Beebe[5]	2000	41.2	$75	$ 3,090.00
Personnel subtotal				**$ 20,581.50**
Travel Expenses				$ 246.00
Miscellaneous Expenses				$ 134.97
Expenses subtotal				**$ 380.97**
Total Compensation Request				$ 20,962.47

5.1.2 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." We have on previous occasions adopted the rates requested for Shames ($195/hour) and Jodi Beebe ($75/hour), most recently in D.02-11-020 for work in 1999, 2000, and 2001. UCAN seeks the same rates for their work in this proceeding. We grant UCAN's request.

Consistent with our usual practice, UCAN has separated the hours spent traveling, and we have corrected its hours for preparing its intervenor compensation award claim, and charged for them at one-half of its requested hourly rates.

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[5] One hour of Beebe's time is related to preparation of UCAN's NOI. We do not reduce the rate for this time, as we did for Shames, because it is our policy to make that reduction when senior level staff prepare the requests. Here, UCAN assigned a less senior staff member to do this work and thus we compensate her time at her full hourly rate.

5.1.3 Other Costs

UCAN has listed $380.97 in expenses associated with this case for its travel, photocopying, and postage. The cost breakdown included with UCAN's claim shows its miscellaneous expenses to be commensurate with the work performed. We find UCAN's other costs reasonable.

5.1.4 Total Award

We award UCAN $20,962.47 for contributions to D.03-02-068.

5.2 TURN's Request

TURN requested $103,594.75. TURN notes that the amount claimed is significant because it was the most active interested party on a broad range of issues, other than the Commission's Office of Ratepayer Advocates. TURN made a significant effort to document and categorize its participation including assigning its time to issues.

5.2.1 Hours Claimed

Table 2 shows the requested hours as set forth in TURN's request for compensation.[6] TURN, NRDC and UCAN jointly coordinated their efforts to limit duplicative efforts. In addition, TURN received an Energy Foundation grant to support its work in this proceeding and has reduced its request for compensation by that amount. Based on the scope of TURN's participation in this proceeding, the requested hours are reasonable.

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[6] TURN's request states that the requested amount is $103,594.75. The table on page 13 of TURN's request shows a total of $107,594.75. There is a calculation error in the table that brings the requested total to $108,319.75.

Table 2

Advocate	Year	Hours	Rate	Total
Freedman - technical	2000/01	391.25	$ 190	$74,337.50
Freedman - compensation	2000/01	1.25	$ 95	$118.75
Freedman - technical	2003	11.5	$ 200	$2,300.00
Freedman - compensation	2003	9.0	$ 100	$900.00
Finkelstein - technical	1999	1.0	$ 265	$265.00
Finkelstein – compensation	1999	0.5	$132.50	$66.25
Finkelstein- technical[7]	2000	7.25	$ 280	$2,030.00
Finkelstein – compensation	2003	5.0	$ 170	$850.00
Florio	2000	16.0	$ 315	$5,040.00
Biewald	2000	132.0	$125	$16,500.00
Johnston	2000	161.0	$105	$16,905.00
Personnel subtotal				**$119,312.50**
Expenses (TURN)				$ 8,666.87
Expenses (Consultants)				$ 340.38
Offsetting Grant – Energy Foundation				**($20,000.00)**
Total Compensation Request (corrected)				**$108,319.75**

5.2.2 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."

We have on previous occasions adopted the rate requested for Matthew Freedman work performed in 2000 and 2001. For the small number of hours of work by Freedman in 2003, TURN requests the same rate authorized in 2002, without waiving its opportunity to justify a higher 2003 rate in subsequent proceedings. TURN seeks the previously adopted 2000 rate for Michel Florio. TURN also seeks to use previously authorized rates for Robert Finkelstein.

[7] TURN's request for Finkelstein's costs in 2000 contained a computational error, corrected here.

TURN proposes to use one-half of the approved 2002 rate for Finkelstein's time preparing the request for compensation in 2003, without waiving its opportunity to justify a higher 2003 rate in subsequent proceedings of $340. These rates are all reasonable and we adopt them.

Bruce Biewald is the president of Synapse Energy and has previously testified before the Commission on behalf of Redwood Alliance in the 1999 Pacific Gas and Electric Company general rate case. In D.00-09-068, the Commission awarded a 1998 rate of $110 for Biewald. TURN asserts, and we agree, that a $15 increase to $125, for work two years later, is reasonable.

This is the first request for a rate for Lucy Johnston. TURN compares the requested 2000 rate of $105 to 2000 rates of $100 granted to experts Greg Ruszovan and Jeff Nahigian. Johnston and these experts have comparable qualifications and experience. Johnston's work was billed to TURN at $105/hour. Johnston's experience is also similar to NRDC's expert, Sheryl Carter. We find that $105 is within the range of 2000 hourly rates adopted for experts with similar experience and adopt it for Johnston.

Consistent with our usual practice, TURN correctly separated out hours spent traveling and preparing its intervenor compensation award claim, and charged for them at one-half of its requested hourly rates.

5.2.3 Other Costs

TURN has listed $8,666.87 in expenses associated with this case for its photocopying and postage. TURN's request also includes $340.38 in expenses for its consultants. The cost breakdown included with TURN's claim shows its miscellaneous expenses to be commensurate with the work performed. We find all of TURN's other costs reasonable.

The cost to TURN was significantly reduced by a grant of $20,000 from the Energy Foundation. We commend TURN for finding an additional source of funding to offset the burden on ratepayers.

5.2.4 Total Award – TURN

We award TURN $108,319.75 for contributions to D.01-07-027 and D.03-02-068.

5.3 NRDC's Request

5.3.1 Hours Claimed

NRDC's hours for Sheryl Carter are documented by issue and by work activities related to those topics. NRDC made an effort to minimize its hours and did not charge for travel time or the time to prepare its Notice or Request. The hours claimed are reasonable given its work in the proceeding.

Table 3

Advocate	Year	Hours	Rate	Total
Sheryl Carter	1999	15.75	$ 125	$ 1,968.75
Sheryl Carter	2000	73.00	$ 125	$ 9,125.00
Sheryl Carter	2002	10.00	$ 135	$ 1,350.00
Sheryl Carter	2003	6.50	$ 150	$ 975.00
Total Requested Compensation				**$13,418.75**

5.3.2 Hourly Rates

The Commission last adopted an hourly rate of $100 for Carter in D.98-08-016, for work performed in 1995 and 1996. NRDC requests hourly rates here of $125 for 1999 and 2000, $135 in 2002, and $150 in 2003. NRDC ties the $150 request to the 1998 rate adopted for another NRDC representative, Peter Miller, citing Carter's experience to be at least equal now to his level in 1998, without adjusting the rate for inflation over five years. Carter has a Masters

degree from the University of Minnesota in Public Affairs, Technology, Energy and Environmental Policy, and eleven years of experience in energy policy and utility regulation. We adopt the requested rates.

5.3.3 Other Costs

NRDC did not seek costs for travel, postage or photocopying.

5.3.4 Total Award – NRDC

We award NRDC $13,418.75 for contributions to D.03-02-068.

6. Interest on Awards

Consistent with previous Commission decisions, we will order that UCAN, TURN, and NRDC, receive the award amount plus interest (calculated at the three-month commercial paper rate as reported in Federal Reserve Statistical Release H.15) commencing on the 75th day after they filed their compensation requests, continuing until full payment has been made.

7. Allocation of Compensation Between the Utilities

No party has suggested a method for allocating the award among the utilities. Therefore, we direct PG&E, SDG&E and SCE to allocate the awards based upon their California-jurisdictional electric revenues for the 2000 calendar year, to reflect the year in which the proceeding was primarily litigated.

8. Preservation of Documentation

As in all intervenor compensation decisions, we put UCAN, TURN, and NRDC on notice that they must make and retain adequate accounting and other documentation to support the intervenor compensation claims, and that the Commission staff may audit their records related to this award. Those records should identify specific issues for which it has requested compensation, the

actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

9. Waiver of Comment Period

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

10. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Michelle Cooke is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. UCAN, TURN, and NRDC were granted eligibility for compensation by Rulings in response to timely Notices.
2. UCAN, TURN, and NRDC made timely requests for compensation for contributions to D.03-02-068 and, in the case of TURN, to D.01-07-027.
3. UCAN, TURN, and NRDC contributed substantially to D.03-02-068 and, in the case of TURN, to D.01-07-027.
4. The participation of UCAN, TURN, and NRDC was productive in that the costs claimed for participation were less than the benefits realized.
5. UCAN requests hourly rates for Shames and Beebe that have previously been approved by the Commission.
6. TURN requests hourly rates for Freedman, Finkelstein, and Florio that have previously been approved by the Commission.
7. TURN requests hourly rates for Biewald and Johnston that are reasonable.
8. NRDC requests hourly rates for Carter that are reasonable.
9. UCAN's hours claimed for work performed in this case, as adjusted, are reasonable.

10. TURN's hours claimed for work performed in this case are reasonable.

11. NRDC's hours claimed for work performed in this case are reasonable.

12. The miscellaneous costs incurred by UCAN and TURN are reasonable.

13. It is appropriate that the obligation for paying the awards be allocated on the basis of the utilities' California-jurisdictional electric revenues for the calendar year 2000.

14. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. UCAN, TURN, and NRDC have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. UCAN should be awarded $20,905.97 for contributions to D.03-02-068.

3. TURN should be awarded $108,319.75 for contributions to D.03-02-068 and D.01-07-027.

4. NRDC should be awarded $13,418.75 for contributions to D.03-02-068.

5. 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.

6. This order should be effective today so that UCAN, TURN, and NRDC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall pay the awards granted by Ordering Paragraphs 2, 3, and 4. The payment obligation

shall be allocated among the utilities in proportion to their California-jurisdictional electric revenues for calendar year 2000.

2. Utility Consumers' Action Network is awarded $20,905.97 in compensation for its substantial contribution to Decision (D.) 03-02-068. PG&E, SDG&E and SCE shall make payment within 30 days of the effective date of this order. PG&E, SDG&E and SCE 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, beginning the 75th day after March 24, 2003, the date the request was filed, and continuing until full payment has been made.

3. The Utility Reform Network is awarded $108,319.75 in compensation for its substantial contribution to D.03-02-068 and D.01-07-027. PG&E, SDG&E and SCE shall make payment within 30 days of the effective date of this order. PG&E, SDG&E and SCE 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, beginning the 75th day after May 5, 2003, the date the request was filed, and continuing until full payment has been made.

4. The Natural Resources Defense Council is awarded $13,418.75 in compensation for its substantial contribution to D.03-02-068. PG&E, SDG&E and SCE shall make payment within 30 days of the effective date of this order. PG&E, SDG&E and SCE 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, beginning the 75th day after May 5, 2003, the date the request was filed, and continuing until full payment has been made.

5. The comment period for this decision is waived.
6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0302068, D0107027
Proceeding(s):	R9910025
Author:	ALJ Cooke
Payer(s):	Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/ Disallowance
Utility Consumers' Action Network	3/24/03	$21,449.97	$20,962.47	Arithmetic error; failure to discount compensation preparation time
The Utility Reform Network	5/5/03	$103,594.75	$ 108,319.75	Arithmetic error
Natural Resources Defense Council	5/5/03	$13,418.75	$13,418.75	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	Utility Consumers' Action Network	$195	1999-2003	$195
Jodi	Beebe	Policy Expert	Utility Consumers' Action Network	$75	2000	$75
Matthew	Freedman	Attorney	The Utility Reform Network	$190	2000	$190
Matthew	Freedman	Attorney	The Utility Reform Network	$200	2002	$200
Robert	Finkelstein	Attorney	The Utility Reform Network	$265	1999	$265

Robert	Finkelstein	Attorney	The Utility Reform Network	$280	2000	$280
Robert	Finkelstein	Attorney	The Utility Reform Network	$280	2002	$280
Michel	Florio	Attorney	The Utility Reform Network	$315	2000	$315
Bruce	Biewald	Policy Expert	The Utility Reform Network	$125	2000	$125
Lucy	Johnston	Policy Expert	The Utility Reform Network	$105	2000	$105
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	$125	1999	$125
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	$125	2000	$125
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	$135	2002	$135
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	$150	2003	$150