Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison (U 338 E) for Authority to Lower and Adjust Retail Electric Rates for All Customer Classes Upon Completion of Full Recovery of Procurement Related Obligations Account (PROACT) Balance.	Application 03-01-019 (Filed January 17, 2003)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION (D.) 03-07-029 AND D.04-08-045

This decision awards The Utility Reform Network (TURN) $20,181.60 in compensation for its contribution to D.03-07-029 and D.04-08-045.

1. Background

In D.03-07-029, the Commission approved a settlement which lowered Southern California Edison Company's (SCE) retail electric rates by $1.25 billion and removed rate surcharges imposed during the energy crisis of 2000-2001.

In D.04-08-045, the Commission approved the petition of Visalia Senior Housing (VSH) to modify D.03-07-029 so that CARE[1] rates for eligible non-profit group living facilities would not be inadvertently increased as a result of the settlement adopted in D.03-07-029.

[1] California Alternate Rates for Energy Program.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature 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 (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 comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

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

TURN has satisfied all the procedural requirements necessary to make its request for compensation. In a May 12, 2003 ruling, Administrative Law Judge (ALJ) Robert Barnett determined that TURN had properly filed a NOI as required by § 1804(a), qualified as a customer as required by § 1802(b), and demonstrated significant financial hardship as required by §§ 1802(g) and 1804(b)(1). Also, consistent with the requirements of §1804(c) and Rule 76.72, TURN's request was timely filed within 60 days of August 30, 2004, the date of issuance (mailing of) D.04-08-045, which included the order closing this proceeding.

TURN was an active participant in most aspects of this proceeding as a representative of the interests of SCE's residential customers. According to TURN, the interests of those customers would not have been adequately represented in this proceeding absent TURN's participation, especially given the active involvement of numerous representatives of non-residential customer interests.

3. 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

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.[2]

The question before us now is whether the contribution of TURN warrants an intervenor compensation award in the amount requested. We begin, as the statute requires, by determining whether TURN, made a substantial contribution to D.03-07-029 and D.04-08-045.

TURN states that it was an active participant in most aspects of this proceeding as a representative of the interests of SCE's residential customers. According to TURN, the interests of those customers would not have been adequately represented in this proceeding absent TURN's participation, especially given the active involvement of numerous representatives of non-residential customer interests.

TURN points out that SCE's application proposed to allocate none of this very large rate reduction to the domestic class. In addition, SCE proposed various rate design changes that would actually have increased the bills of many individual residential customers. TURN filed a detailed protest to the application, raising a number of legal and policy arguments in opposition to the

[2] D.98-04-059, 79 CPUC3d, 628 at 653.

SCE proposal. The Office of Ratepayer Advocates (ORA) was the only other party that protested the application.

According to TURN, it entered into settlement negotiations with SCE and the other parties in an effort to reach an agreed upon allocation that would allow the promised rate reductions to take effect at the earliest possible date, without the delay that full litigation of the proceeding would certainly have created. TURN played a very active role in those negotiations, suggesting various approaches that might provide a basis for reaching consensus among the parties. Those efforts ultimately proved successful, and a formal settlement agreement was filed with the Commission on April 23, 2003. That agreement, which was supported by virtually all of the active parties, provided for an overall residential class rate reduction of almost 8% (D.03-07-029, p. 13), and eliminated the proposed rate design changes that would otherwise have increased bills for certain residential consumers. D.03-07-029 approved the proposed settlement agreement.

In addition, TURN also contributed to a later decision. Specifically, after D.03-07-029, VSH filed a petition for modification of that decision, pointing out that the very limited class of non-residential CARE customers – of which VSH is a member – had actually experienced rate increases as a result of SCE's implementation of the decision, and seeking relief from such increases. TURN did not respond to VHS's petition at the time it was filed but thereafter, on June 7, 2004, a Draft Decision (DD) was issued that would have denied the petition outright. TURN filed reply comments in response to SCE's comments supporting the DD on July 6, 2004, arguing that the rate increase for non-residential CARE customers was inconsistent with the intent of the settling parties and with D.03-07-029. At the July 8, 2004 Commission Meeting,

Consent Agenda Item 14, which would have adopted the DD denying VSH's petition, was held.

Thereafter, on July 16, VSH filed a motion for leave to submit late-filed comments on the DD. According to the motion, VSH had not been served with the DD and was thus unable to comment within the normal time period. D.04-08-045 ultimately granted VSH's petition and the relief requested therein.

TURN submits that the limited amount of time (1.25 hours) spent preparing the reply comments on the DD made a substantial contribution to D.04-08-045 by alerting the Commission to the fact that Agenda Item 14 was not a non-controversial consent matter. By securing a hold on that item, TURN's action made it possible for VSH to submit its own late-filed comments on the DD. Moreover, the decision accepted TURN's representation that it was not the intent of the settling parties to increase non-residential CARE rates (D.04-08-045, p. 8). Thus, while TURN agrees that virtually all of the credit for D.04-08-045 rightfully belongs to VSH, TURN believes it made a substantial contribution of its own through the submission of its comments. TURN's work was either unique or complemented the participation of others.

We conclude that given the overall benefits of the settlement, and the importance of representation of all affected interests in any settlement to be reviewed and possibly approved by the Commission, TURN's participation made a substantial contribution to D.03-07-029 and D.04-08-045, as defined in § 1801(i).

4. Reasonableness of Requested Compensation

After we have determined that a customer made a substantial contribution and have established its scope, we then look at whether the compensation requested is reasonable. 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. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, 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 their participation. This showing assists us in determining the overall reasonableness of the request.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

With these guidelines in mind, we address TURN's compensation request as summarized below.

Attorney's Fees			
Michel P. Florio	1.25 hours X $470	=	$587.50
	19.50 hours X $435	=	$8,482.50
	3.25 hours X $235 (comp)	=	$763.75
Matthew Freedman	24.50 hours X $225	=	$5,512.50
Robert Finkelstein	0.75 hours X $365	=	$273.75
	0.50 hours X $182.50 (comp)		$91.25
	Subtotal	**=**	**$15,711.25**
Expert Consultant Costs – JBS Energy, Inc.			
William Marcus	20.65 hours X $185	=	$3,820.25
JBS Travel Expenses		=	$68.70

Subtotal	**=**	**$3,888.95**
<u>Other Reasonable Costs</u>		
Photocopying expense	=	$468.60
Postage costs	=	$112.80
Subtotal	=	**$581.40**
Total	**=**	**$20,181.60**

According to TURN, the benefit of its work on behalf of residential consumers can easily be quantified at $271 million.

TURN states that Michel Florio and Matthew Freedman shared responsibility for TURN's work in this proceeding, with a small amount of assistance from Robert Finkelstein. William Marcus of JBS Energy, Inc. provided expert consulting services and would have served as TURN's witness if the case had gone to hearing. Daily listings of the specific tasks performed by each of these individuals are set forth in Appendices A and B to TURN's compensation request. TURN's attorneys and consultant maintained detailed contemporaneous time records indicating the number of hours devoted to this case, and the tasks performed in those hours.[3]

TURN states that it typically allocates its work activities on an issue-by-issue in its compensation requests; however, in this proceeding each issue was covered in a distinct time period. The first issue was the allocation of the rate reduction proposed by SCE (addressed in 2003), and the second was the appropriateness of granting the VSH petition for modification (addressed in

[3] TURN has designated the compensation-related entries as "Comp" in its Appendix A, and seeks compensation at half the usual hourly rate for those hours, consistent with the Commission's practice of generally treating compensation requests as a pleading not requiring an attorney's drafting efforts.

2004). According to TURN, given the limited hours it devoted to the proceeding and the time-specific nature of its work, no further allocation by issue was attempted.

TURN requests an hourly rate of $435 for work Florio performed in 2003, the same rate the Commission previously approved for his work in that year.[4] For the hours Florio devoted to this proceeding in 2004, TURN proposes to increase the approved 2003 rate by 8%, to $470, consistent with Resolution ALJ-184, issued at the Commission's August 19, 2004 meeting.[5] We agree that Florio's hourly rate for work performed in 2004 should be increased to $470.

TURN requests previously approved hourly rates for Freedman, Finkelstein, and Marcus. These rates are appropriate.

The expenses for which TURN seeks recovery in this request, are limited to postage and copying costs incurred to distribute its various pleadings to the parties in this case.

We conclude that the costs of TURN's participation are reasonable given the benefits realized. As described in D.03-08-029, the residential class received rate reductions of $271 million as a result of the settlement, as compared with a zero reduction under SCE's proposal.

5. Award

We award TURN $20,181.60 in intervenor compensation. 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

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[4] *See* D.04-02-017 (in R.02-01-011), p. 15, for the 2003 rate.

[5] An 8% increase to Florio's 2003 hourly rate of $435 yields an hourly rate of $469.80. TURN has rounded that figure to the nearest $5 increment.

in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made. The award is to be paid by SCE as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to awards, and 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.

6. 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.

7. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.03-07-029 and D.04-08-045 as described herein.
2. The total of the reasonable compensation is $20,181.60.

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 fees and expenses for its substantial contribution to D.03-08-029 and D.04-08-045.

2. TURN should be awarded $20,181.60 for its contribution to D.03-08-029 and D.04-08-045.

3. An hourly rate of $470 for work performed by Florio in 2004 is reasonable.

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

5. 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 $20,181.60 for its substantial contribution to Decision (D.) 03-07-029 and D.04-08-045.

2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay TURN the total award.

3. 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 January 12, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

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

5. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Compensation Decision Summary Information

Compensation Decision(s):		**Modifies Decision?** No
Contribution Decision(s):	D0307029 and D0408045	
Proceeding(s):	A0301019	
Author:	ALJ Barnett	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/ Disallowance
The Utility Reform Network	10/29/2004	$20,181.60	$20,181.60	No	

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	$435	2003	$435
Michel	Florio	Attorney	The Utility Reform Network	$470	2004	$470
Matthew	Freedman	Attorney	The Utility Reform Network	$225	2003	$225
Robert	Finkelstein	Attorney	The Utility Reform Network	$365	2003	$365
William	Marcus	Economist	The Utility Reform Network	$185	2003	$185