Decision **DRAFT DECISION OF ALJ ALLEN** **(Mailed 11/23/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION GRANTING INTERVENOR COMPENSATION

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OPINION GRANTING INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) $1,043,871.80 in compensation for (1) its further participation in the federal district court proceedings in which Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E) challenged the Commission's jurisdiction to limit the utilities' recovery of increased wholesale procurement costs, and (2) its efforts in the judicial review of Decision (D.) 02-06-070, which awarded TURN intervenor compensation for its earlier participation in those federal proceedings.

A. Background

These consolidated proceedings include the Post-Transition Ratemaking dockets (A.99-10-016 *et al.*) in which we addressed post-rate freeze recovery of rate freeze costs, and the Rate Stabilization Plan dockets (A.00-11-038 *et al.*) in which we addressed PG&E's and Edison's applications for emergency relief from the skyrocketing wholesale electricity prices in 2000. In the Post-Transition Ratemaking dockets, we determined that Pub. Util. Code § 368 bars utilities from recovering, through post-rate freeze rates, costs incurred during the rate freeze. (D.99-10-057, as modified by D.00-03-058.) (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.) In the Rate Stabilization Plan dockets, however, we ultimately authorized and implemented a rate increase of four cents/kWh in recognition of Edison's and PG&E's increased costs due to the extraordinary circumstances in California's wholesale power markets. (D.01-03-082.)

In November 2000, Edison and PG&E filed separate federal court actions challenging the Commission's jurisdiction to limit the utilities' recovery of their increased wholesale procurement costs.[1] TURN intervened in those actions.

The two federal lawsuits followed different procedural paths. PG&E filed for bankruptcy in April 2001, and the Commission entered into a settlement of the bankruptcy in December 2003. (*See* D.03-12-035.) Pursuant to the terms of the bankruptcy settlement, PG&E's federal court action will be dismissed.[2]

The Commission and Edison entered into a Joint Stipulation in settlement of Edison's federal lawsuit in October 2001. TURN appealed the District Court's judgment affirming the settlement to the Ninth Circuit Court of Appeals. On September 23, 2002, the Ninth Circuit affirmed the District Court's judgment in part and certified several questions to the California Supreme Court regarding whether the agreement violated state law.[3] On August 21, 2003, the Supreme Court answered the Ninth Circuit, concluding that the Stipulated

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[1] *Edison v. Lynch et al.*, Case No. 00-12056-RSWL (Mcx), United States District Court for the Central District of California (Western Division) (filed November 13, 2000), and *PG&E v. Lynch, et al.*, Case No. CV 00-4128 (SBA), United States District Court for the Northern District of California (filed November 8, 2000).

[2] *PG&E v. Lynch* remains an open docket, pending resolution of appeal of the Commission's decision approving the settlement (D.03-12-035) and of the confirmation order approving the settlement in bankruptcy court (*In re Pacific Gas and Electric Company*, Debtor, United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 01-30923 DM, Confirmation Order, dated December 22, 2003).

[3] *Edison v. Lynch*, 308 F.3d 794 (9th Cir. 2002).

Judgment did not violate state law.[4] The Ninth Circuit entered final judgment on December 19, 2003, bringing Edison's federal lawsuit to a close.

As these events were unfolding, TURN in July 2001 filed a request for compensation for the costs, among others, of the first six months of its participation in Edison's and PG&E's federal court actions. The Commission granted TURN's request 11 months later in D.02-06-070, finding that TURN had made a substantial contribution to the various decisions affecting the utilities' ability to recover their costs of wholesale power during the energy crisis. Because the federal lawsuits sought to challenge the Commission's authority to make those decisions, the Commission found that the costs of TURN's federal court work were reasonably incurred in order to make its substantial contribution to the adopted decisions.

Edison and PG&E each applied for rehearing of D.02-06-070 on the issue of compensation for TURN's federal district court work. We denied rehearing of our order, as modified. (*See* D.03-04-034.) Edison petitioned the Second Appellate District of the California Court of Appeal for writ of review of those orders. On October 8, 2003, the court issued the writ granting review. The court ultimately rejected Edison's appeal on April 19, 2004.[5] Sixty days after the court's decision upholding D.02-06-070 and D.03-04-034,[6] TURN filed this

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[4] *Edison v. Peevey* (2003) 31 Cal. 4th 781. The Ninth Circuit entered judgment in *Edison v. Lynch* on December 19, 2003. (353 F.3d 648.)

[5] *Edison v. CPUC,* 12 Cal.Rptr.3d 441.

[6] On November 22, 2002, TURN filed a request for intervenor compensation for its work in the federal lawsuits from mid-2001 through September 2002. The Commission denied the request without prejudice because the Commission wanted to await final determinations on the federal lawsuits before evaluating it. (*See* D.03-12-044.)

request for compensation. Edison opposes TURN's request only insofar as TURN seeks an award enhancement, full compensation for time spent preparing this request, and compensation for time spent on media and outside lobbying. TURN has replied to Edison's opposition.

B. 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. 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).) As relevant to today's decision, an intervenor who has made a "substantial contribution" may also, in certain circumstances, receive a compensation

award for fees and costs incurred in "obtaining judicial review." (§ 1802(a); see *Southern California Edison Co. v. PUC* (April 19, 2004, B166993), 2004 Cal. App. LEXIS 568, affirming D.02-06-070 and D.03-04-034.)

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 discussions on Items 5-6.

C. Procedural Issues

Our previous findings that TURN timely filed its notice of intent and made a showing of significant financial hardship apply to this request for compensation as well. (*See* D.02-06-070.)

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. However, § 1802(a) defines the "compensation" to be awarded as including "the fees and costs of obtaining […] judicial review," which more often than not will be incurred well after 60 days of issuance of the Commission's final decision. TURN asks that we determine that this request for compensation is timely filed by deeming the April 19, 2004, issuance of the District Court of Appeals decision upholding our decisions on TURN's previous request for compensation as an appropriate trigger of the sixty-day period set forth in § 1804(c). We do so.

We previously dismissed TURN's compensation request without prejudice, exercising our discretion to await the final determination in the federal court cases before evaluating the request. (*See* D.03-12-041.) *Edison v. Lynch* was finally resolved on December 19, 2003. While *PG&E v. Lynch* is still an open

docket pending final resolution of the appeal in state court of D.03-12-035, this is a reasonable point to consider TURN's request, given the sum in question and the time period that has elapsed.

D. Substantial Contribution

In evaluating whether a customer made a substantial contribution, 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(h), 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.[7]

Even where the Commission does 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

[7] D.98-04-059, 79 CPUC2d, 628 at 653.

enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.[8] With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

1. Contribution to D.99-10-057, D.00-03-058, and D.01-03-082

We previously found that TURN had substantially contributed to D.99-10-057 and D.00-03-058, our decisions in the Post-Transition Ratemaking proceedings in which we determined that PG&E and Edison could not recover post-rate freeze costs incurred during the rate freeze. (D.00-11-002.) We also found that TURN had substantially contributed to D.01-03-082, our decision in the Rate Stabilization Plan proceedings in which we partially granted PG&E's and Edison's requests for rate increases. (D.02-06-070.) We also determined that TURN's work in the federal lawsuits substantially contributed to its ability to make its substantial contribution to "the eventual decision in this matter." (D.03-04-04, Ordering Paragraph 1.d, specifically referring to D.01-03-082.) However, our earlier findings of substantial contribution are not wholly dispositive of TURN's requests. Still at issue is compensation for TURN's challenge of the settlement entered into by the Commission and Edison, and TURN's subsequent appeal of the District Court judgment affirming the settlement.

TURN maintains that, having made "substantial contributions to the PUC proceedings at issue in the filed rate doctrine litigation," its fees and costs of judicial review are compensable. TURN cites to *SCE v. PUC,* which states:

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[8] *See* D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

> "Indeed, making a substantial contribution is a prerequisite to an award of compensation (§1803.) However, once a customer makes such a contribution to a PUC proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding." (*SCE v. PUC (2004) 117 Cal. App. 4th 1039.*)

Section 1802(a) does not require the applicant to be successful in its efforts at the judicial review stage in order to receive full compensation for its reasonable costs of obtaining judicial review. Moreover, in *SCE v. PUC (2004) 117 Cal. App. 4th 1039*, the court affirmed D.03-04-034, and addressed the question of whether an intervenor's work in the federal court must, in and of itself, make a substantial contribution to the underlying decision or order. In response to SCE's claim that the costs of TURN's federal court work were not compensable because the work did not make a "substantial contribution" to the underlying Commission decision, the court held that once a customer makes the requisite substantial contribution to a Commission proceeding, the customer may obtain the reasonable fees and costs of obtaining judicial review "regardless of whether that judicial review work made a substantial contribution to the CPUC proceeding." (*Id.*) The court stated that"[a]ny contrary construction would render the judicial review clause of section 1802, subdivision (a) meaningless in most cases because such review virtually always occurs *after* the PUC has issued its decision." (Ibid.) As affirmed, D.03-04-034 further established that "the work before the reviewing court must be *related to* or necessary for the substantial contribution made in the Commission decision for which compensation is sought." (D.03-04-034, slip op. at p.5, emphasis added.)

As noted above, we previously found that in the Post-Transition Ratemaking proceedings TURN had substantially contributed to D.99-10-057 and D.00-03-058. (*See* D.00-11-002.) We also found that in the Rate Stabilization Plan proceedings TURN substantially contributed to D.01-03-082. (*See* D.02-06-070, as modified and affirmed in D.03-04-034.) We also determined that TURN's work in the federal lawsuits filed by SCE and PG&E substantially contributed to TURN's ability to make its substantial contribution to "the eventual decision in this matter." (D.03-04-034, Ordering Paragraph 1.d, specifically referring to D.01-03-082.) Thus, having previously found TURN to have made a substantial contribution, we now address whether TURN's appeal of the District Court's judgment affirming the settlement relates to or is necessary for TURN's substantial contributions in these various decisions.

The facts before us establish that a strong relationship exists between TURN's prior contributions and the issue presented on judicial appeal. Specifically, the Commission negotiated and settled litigation that challenged the Commission decisions to which TURN made a substantial contribution. Indeed, the settlement addressed many, if not all, of the same issues on which TURN made its contributions at the Commission. Because the settlement concerned issues on which TURN was found to have made a substantial contribution, the outcome of the judicial review obtained by TURN was related to, and indeed, went directly to, the Commission's treatment of the issues to which TURN was found to have made a substantial contribution. We also note that the settlement is not accompanied by any Commission decisions modifying or rejecting, in pertinent part, the earlier decisions to which TURN substantially contributed. Thus, we must look to those earlier decisions to determine whether the issues to which TURN substantially contributed are indeed those involved in the judicial

review of the settlement. In disputing the terms of the settlement (and its propriety) TURN inevitably was defending its earlier substantial contribution.

Accordingly, we find that TURN's appeal of the District Court's judgment affirming the settlement relates to TURN's prior substantial contribution. We therefore find that TURN's federal court work, including its judicial challenge to our settlements with Edison and PG&E, is compensable.

2. Contribution to the Commission's Decisions on TURN's Initial Compensation Request

We find that TURN substantially contributed to D.02-06-070, our decision granting its initial compensation request, and to D.03-04-034, our decision denying rehearing of D.02-06-070. Likewise, TURN's successful defense of those decisions on appeal to the California Court of Appeal is compensable.

E. Reasonableness of Requested Compensation

TURN requests $1,935,013.19 for its participation in this proceeding, as follows:

	Year	Hours	Rate	Amount
TURN staff counsel				
Robert Finkelstein	2001	107.5	$310	$33,325.00
	2002	229.75	$340	$78,115.00
	2003	40	$365	$14,600.00
	2004	64	$395	$25,280.00
Michel P. Florio	2001	59.5	$350	$20,825.00
	2002	76	$385	$29,260.00
	2003	72.5	$435	$31,537.50
Randy Wu	2001	46.5	$350	$16,275.00
	2002	89.5	$385	$34,457.50

Matthew Freedman	2001	12	$190	$2,280.00
	2002	15	$200	$3,000.00
Hayley Goodson	2002	46.25	$125	$5,781.25
Total TURN staff counsel				$281,826.30 [9]
Outside counsel				
Michael J. Strumwasser	2001	306	$459	$140,454.00
	2002	444.7	$482	$214,345.40
	2003	521.8	$513	$267,683.40
	2004	121.7	$550	$66,935.00
Fredric D. Woocher	2001	9.6	$459	$4,406.40
	2002	1.4	$482	$674.80
	2003	1.7	$513	$872.10
Johanna Shargel	2001	178.1	$333	$59,307.30
	2002	26.6	$350	$9,310.00
	2003	180.8	$375	$67,800.00
Daniel J. Sharfstein	2001	201.6	$225	$45,360.00
	2002	117	$225	$26,325.00
Lea Rappaport Geller	2001	5.4	$225	$1,215.00
	2002	6.1	$225	$1,372.50
	2003	62.2	$255	$15,861.00
	2004	5.9	$295	$1,740.50
Lamar W. Baker	2002	50.3	$225	$11,317.50

[9] By our calculation, this total is $294,736.25.

	2003	0.3	$255	$76.50
Becky L. Monroe	2003	1	$255	$255.00
	2004	6.8	$295	$2,006.00
Joshua C. Lee	2002	37.3	$140	$5,222.00
	2003	3.5	$140	$490.00
Total outside counsel				$943,029.40
Total all counsel				**$1,224,855.70**
TURN expenses				$6,838.86
Outside counsel expenses				$43,503.35
D.02-06-070 adjustment				$67,190.50
Total (baseline)				**$1,342,388.41**
Enhancement requested				$592,624.78
TOTAL REQUESTED				**$1,935,013.19**

1. Overall Benefits of Participation

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.

The overall benefits of TURN's participation in this proceeding and in the related federal court actions is sufficiently demonstrated by the fact that the cost of its participation is minimal in comparison to the enormous financial consequences for ratepayers in the proceeding. Further, TURN's litigation of its earlier intervenor compensation request provides the social benefit of promoting

effective customer participation in the public utility regulation process which, though hard to quantify in isolation, is substantial.

2. Hours Claimed

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a description of each activity. With the limited exceptions discussed below, the hourly breakdown reasonably supports the claim. We also note the efficiency of TURN's participation in federal court. TURN compares the 4000 hours billed by PG&E's outside counsel during the four-month period from April through July 2002, to the 1200 hours billed by TURN's outside counsel for its work on both the PG&E and Edison filed rate doctrine cases in the fourteen-month period covered by this request.

Edison opposes compensation for TURN's costs associated with its media and legislative work. Consistent with our prior decisions, we will disallow them. As we stated in D.96-06-029, "Communicating with the news media does not constitute participation in our proceedings within the meaning of Section 1801 *et seq.* Accordingly, we shall not grant compensation for time spent on these activities." Likewise, time spent lobbying non-CPUC officials does not meet the definition of "participation" or "intervention" in Commission proceedings. TURN asks that we conclude here, as we did in D.95-08-051, that its legislative work is compensable. The legislative work at issue and compensated in D.95-08-051 was participation in legislative hearings that served to inform the Commission's eventual decision. In contrast, the legislative work for which TURN requests compensation here does not appear to be part of an open legislative hearing and did not inform our decisions.

TURN asks that we compensate it for its media work regarding the federal court proceedings, notwithstanding our prior decisions denying

compensation. TURN suggests that, to the extent our previous rulings were motivated by our desire to restrict the influence of the media on our decision-making, there is less concern that the media will influence the court's decision-making. TURN argues that its media activity should be compensated because ratepayers pay for the utility's lawyer's time for spent on media activity. We reject TURN's argument; our prior rulings are based squarely on the costs that are compensable under the governing legislation. We deny compensation for media work because it is not a necessary adjunct to participating in, or obtaining judicial review of, Commission proceedings.

Accordingly, we will disallow 21.7 hours as follows:

11/9/01	Shargel	4.7 hr.
1/6/02	Strumwasser	1.3 hr.
1/7/02	Shargel	0.1 hr.
1/8/02	Shargel	0.1 hr.
1/11/02	Strumwasser	0.1 hr.
1/29/02	Strumwasser	0.3 hr.
10/24/02	Strumwasser	1.0 hr.
5/14/03	Shargel	1.7 hr.
5/2/03	Strumwasser	11.1 hr.
1/31/03	Strumwasser	1.3 hr.

3. Hourly Rates

a) Litigation Staff

TURN seeks an hourly rate of $310 for work performed in 2001, $340 for work performed in 2002, and $365 for work performed in 2003 by attorney Robert Finkelstein. The Commission has previously approved these rates for work performed by Finkelstein, and we find them reasonable.[10] TURN seeks

[10] *See* D.02-06-070, D.03-01-074, and D.03-08-041.

$395 for work performed in 2004 by Finkelstein. In Resolution ALJ-184, adopted August 19, 2004, the Commission indicated that rates requested for 2004 that were as much as 8% greater than adopted 2003 rates would be considered reasonable. The requested $395 is just slightly higher than an 8% adjustment, but we will accept it.

TURN seeks an hourly rate of $350 for work performed in 2001, $385 for work performed in 2002, and $435 for work performed in 2003 by attorney Michel Peter Florio. The Commission has previously approved these rates for work performed by Florio, and we find them reasonable.[11]

TURN seeks an hourly rate of $190 for work performed in 2001, and $200 for work performed in 2002 by attorney Matthew Freedman. The Commission has previously approved these rates for work performed by Freedman, and we find them reasonable.[12]

TURN seeks an hourly rate of $350 for work performed in 2001, and $385 for work performed in 2002 by attorney Randy Wu. The Commission has previously approved these rates for work performed by Wu, and we find them reasonable.[13]

TURN seeks an hourly rate of $125 for work performed in 2002 by Hayley Goodson as a summer law clerk. TURN notes that this is above the $95 hourly rate approved in D.03-05-065 for her work in that year, but asks us to reconsider this figure. TURN asks us to consider revising the rate by reference to D.00-02-044, where we adopted an hourly rate of $100 for law clerk work in 1998.

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[11] *See* D.02-60-070, D.02-09-040, and D.04-02-017.

[12] *See* D.02-10-056 and D.03-04-011.

[13] *See* D.02-09-040 and D.03-01-074.

We will not revise the approved rate for Goodson's summer law clerk work. D.03-05-065 adopted the $95 hourly rate by reference to D.03-04-050, where we adopted an $85 hourly rate for summer law clerk work by a law student in 2001. In contrast, the $100 rate adopted in D.00-02-044 appears to apply to a permanent position.

TURN seeks hourly rates for the services of its outside counsel, Strumwasser & Woocher, that it states are comparable to the rates for services paid by PG&E to its outside counsel Heller Ehrman for their work in the federal court litigation, but which are higher than the actual rates charged by Strumwasser & Woocher to TURN. Section 1806 establishes the comparable market rate for services as the maximum that shall be used to compute the compensation award, "tak[ing] into consideration the market rates paid to persons of comparable training and experience who offer similar services." When we earlier considered the question of compensation rates for TURN's outside counsel in the federal filed rate doctrine cases, we declined to set task-by-task compensation rates and instead compensated TURN's outside counsel on the same basis of experience and training as we compensate practitioners before this Commission. (D.02-06-070.) We will not deviate from that practice, as discussed below.

TURN points out that insufficient internal resources or expertise may drive the need to retain outside counsel. However, an intervenor's lack of sufficient internal resources is not a reason to upwardly adjust the rates that the Commission has found appropriate.

It may be that outside counsel's expertise is so specialized that a higher rate is justified. However, TURN has not made that showing. As we stated in D.02-06-070, Strumwasser and Woocher have training and experience

levels comparable to Florio's. TURN's in-house counsel can claim many of the credentials that TURN cites as evidence of the high level of their training and experience, for example, successful representation of consumers and regulators in agencies and before the California Legislature, and recognition for command of technical issues. Other credentials that TURN cites are not necessarily relevant to the issues litigated, for example, experience in legal issues of insurance-industry regulation, antitrust, governmental ethics, election law, hazardous substances regulation, First Amendment protections, and civil rights cases. TURN's description of its outside counsel's junior and senior associates' educational backgrounds and work experience does not demonstrate that they possess special expertise germane to this litigation.

In D.02-06-070, we found that Woocher and Strumwasser have training and experience levels comparable to Florio's. Accordingly, they will be compensated at Florio's hourly rate for 2002 and 2003. Based on Resolution ALJ-184, we will escalate the 2003 rate to $470 for 2004.

In D.02-06-070, we found that Shargel had energy litigation experience comparable to Freedman. Accordingly, Shargel will be compensated at the same level as Freedman for 2001 and 2002. Based on record before us, we will carry over the 2002 rate to work performed in 2003.

Sharfstein graduated in 2000 from Yale Law School, Geller graduated from Stanford Law School in 2000, Baker graduated in 2001 from Yale Law School, and Monroe graduated from Yale Law School in 2002. All four of these junior associates joined Strumwasser & Woocher after a year of clerking for a federal judge. TURN does not provide the record with compensation rates adopted by the Commission for junior attorneys with less than three years of experience. We will compensate the work performed by the junior associates at

$190 per hour for work performed in their fifth year of experience (comparable to the rate paid for Freedman and Shargel for work performed at that level of experience in D.02-06-070), and $180 per hour for work performed in their fourth year of experience; we will discount that rate by 5%, to $170, for work performed in their second and third years of experience.

TURN requests an hourly rate of $140 for analyst Lee. TURN states that Lee joined Strumwasser & Woocher in 2001. TURN's description of Lee's prior experience does not demonstrate other legal work. We will compensate Lee at $100 per hour, the rate approved for permanent law clerk work in D.00-02-044.

b) Rates for Litigation Staff Work on the Requests for Compensation

TURN seeks the full hourly rates for work performed on rehearing and judicial review of D.02-06-070, which granted TURN's earlier compensation request, as well as for work performed preparing this request for compensation. We agree that the work performed on rehearing and judicial review of TURN's earlier compensation request involved legal analysis deserving of compensation at its full rates.

We are not persuaded that TURN's preparation of the request itself required complex or technical legal analysis. While the request addresses the legal issue of the compensability of its judicial review work, TURN's discussion of this legal issue is essentially limited to summarizing its procedural history and resolution. TURN makes a thorough showing in support of the rates it requests for its outside counsel, but this is essentially a market showing that is required under the statute; it is not especially legalistic or complex. While TURN's discussion in support of its request for a multiplier (a request we reject below) arguably entailed legal analysis and drafting, it is not possible to distinguish how

many hours were spent on this discussion, and we will not compensate all of the preparation hours at the full attorney rate on the basis of this limited effort.

TURN asks the Commission to revisit its practice of awarding compensation for the work associated with preparing the request for compensation at half the hourly rate. (*See* D.98-04-059.) TURN states that court-awarded attorney fees are typically based on the full hourly rate for the attorney working on the request, and points out that PG&E's outside counsel in the bankruptcy proceeding was fully compensated for its work on its fee applications. We considered this issue in Rulemaking 97-01-009/Investigation 97-01-010, and we decline to revisit this aspect of our intervenor compensation program outside of our generic examination of intervenor compensation.

Accordingly, we will apply one half the attorneys' rates to time spent preparing the compensation request.

4. Multiplier

TURN requests a multiplier of 2.0[14] for compensation for professional time spent on its federal litigation work and on the work before the Commission and the District Court of Appeal related to the compensation awarded in D.02-06-070. According to TURN, a multiplier is merited because of the substantial risk that that it would not be able to recover its federal litigation costs, and because nearly all of the factors the Commission has previously cited in favor of awarding multipliers apply to TURN's federal litigation work. We deny TURN's request.

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[14] Although it calculates the proposed award using a 1.5 multiplier, TURN requests consideration of a 2.0 multiplier.

As a matter of policy, we exercise restraint in enhancing hourly rates, and grant enhancement only in exceptional cases. (*See* D.95-05-018.) Some of the factors that we consider in assessing whether an enhanced fee is justified include the novelty and difficulty of the issues presented, the importance of the issue, the skill required to participate effectively, the degree of success, the efficiency of the presentation, and whether the fee is fixed or contingent. (*See* D.96-08-029.)

With respect to TURN's work in the file rate doctrine proceedings, we have already relied on many of these factors in reaching our finding on substantial contribution. Having found that these exceptional circumstances merit a finding of substantial contribution, we will not compound the exception by finding that they also merit a fee enhancement.

With respect to TURN's work on its earlier compensation award, on balance we do not find this case to be so exceptional as to justify a multiplier. The issue of whether an intervenor can be compensated for its participation in judicial review does not, in our judgment, rise to the level of importance that justifies fee enhancement. We do not consider the issue to be exceptionally complex, either legally or technically, or requiring exceptional litigation skill.

5. Other Costs

TURN requests $50,342.21 for expenses (*e.g.*, airfare, photocopying, postage, fax, parking). These expenses cover approximately a two-year period. By way of comparison, the Commission's previous award granted TURN $16,342.86 for expenses over a period which included approximately six months of the federal litigation. These costs appear reasonable.

6. Retroactive Adjustment

TURN requests a retroactive adjustment to the hourly rates used in D.02-06-070 to calculate TURN's initial compensation for the costs of its outside

counsel in 2000 and 2001, using the actual rates Strumwasser & Woocher charged its clients in those years. TURN requests an adjustment of $67,190.50, as follows:

Attorney	Requested Rate	Awarded Rate	Difference	Hours Awarded	Adjustment
Strumwasser	$425	$315	$110	104.1	$1,1451.00
	$425	$350	$75	352.7	$26,452.50
Woocher	$425	$315	$110	5.9	$649.00
	$425	$350	$75	3.8	$285.00
Pollak	$250	$180	$70	87.3	$6,111.00
	$250	$190	$60	368.7	$22,122.00
Shargel	$250	$190	$60	2	$120.00
TOTAL					$67,190.50

As discussed earlier, we adopted rates for Strumwasser & Woocher based on comparable training and experience. Accordingly, no retroactive adjustment is required.

7. Award

As set forth in the table below, we award TURN $1,043,871.80.

	Year	Hours	Rate	Amount
TURN staff counsel				
Robert Finkelstein	2001	107.5	$310	$33,325.00
	2002	211.55	$340	$71,927.00
(request preparation)	2002	18.2	$170	$3,094.00
	2003	40 [15]	$365	$14,600.00
	2004	21.75	$395	$8591.25
(request preparation)	2004	42.25	$197.50	$8344.40
Michel P. Florio	2001	59.5	$350	$20,825.00
	2002	76	$385	$29,260.00
	2003	72.5	$435	$31,537.50
Randy Wu	2001	46.5	$350	$16,275.00
	2002	89.5	$385	$34,457.50
Matthew Freedman	2001	12	$190	$2,280.00

[15] TURN does not claim approximately 114 additional hours shown as worked by Finkelstein in 2003.

	2002	15	$200	$3,000.00
Hayley Goodson	2002	46.25	$95	$4393.75
Total TURN staff counsel				$281,910.40
Outside counsel				
Michael J. Strumwasser	2001	306	$350	$107,100
	2002	436.6	$385	$168,091.00
(request preparation)	2002	8.1	$192.50	$1,559.25
	2003	515.4	$435	$224,199.00
(request preparation)	2003	6.4	$217.50	$1,392.00
	2004	83.2	$470	$39,104.00
(request preparation)	2004	38.5	$235.00	$9,047.50
Fredric D. Woocher	2001	9.6	$350	$3,360.00
	2002	1.4	$385	$539.00
	2003	1.7	$435	$739.50
Johanna Shargel	2001	173.4	$190	$32,946.00
	2002	26.4	$200	$5,280.00
	2003	179.10	$200	$35,820.00
Daniel J. Sharfstein	2001	201.6	$170	$34,272.00
	2002	117	$170	$19,890.00
Lea Rappaport Geller	2001	5.4	$170	$918.00
	2002	6.1	$170	$1,037.00
	2003	62.2	$180	$11,196.00
	2004	5.9	$190	$1,121.00
Lamar W. Baker	2002	50.3	$170	$8,551.00
	2003	0.3	$170	$ 51.00
Becky L. Monroe	2003	1	$170	$170.00
	2004	6.8	$170	$1,156.00
Joshua C. Lee	2002	37.3	$100	$3,750.50
	2003	3.5	$100	$350.00
Total outside counsel				$711,619.25
Total all counsel				**$993,529.65**
TURN expenses				$6,838.86
S&W expenses				$43,503.35
TOTAL				**$1,043,871.80**

Although TURN incurred most of its claimed federal litigation expenses in the Edison federal lawsuit, the Commission proceeding and both of the associated federal lawsuits affected both utilities. We find it appropriate to assess responsibility for payment equally among PG&E and Edison, as we did in D.02-06-070.

Consistent with previous Commission decisions, we will 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 the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

We remind TURN that Commission staff may audit its records related to this 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, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

F. Comment Period

This is an intervenor compensation matter. 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 could be reduced or waived. We have allowed comment on the decision in light of the size of the request and the novelty of some of the issues raised. Comments were filed by TURN and SCE on December 7, 2004, and reply comments were filed by SCE on December 13, 2004. We make no changes as a result of the comments.

G. Assignment of Proceeding

Commissioner Loretta Lynch is the Assigned Commissioner. Administrative Law Judge Peter V. Allen is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Edison's filed-rate doctrine case was finally resolved on December 19, 2003.

2. It is reasonable to assume, for purposes of evaluating this request, that PG&E's filed-rate doctrine case will be dismissed under the terms of the PG&E bankruptcy settlement agreement.

3. Edison's appeal of our decisions on TURN's previous request for compensation was finally resolved on April 19, 2004. It would have served little purpose to review this request for compensation while our decisions on TURN's previous request for compensation was pending appeal.

4. TURN's request for compensation is timely.

5. Our previous findings, in D.02-06-070, that TURN timely filed its notice of intent and made a showing of significant financial hardship apply to this request for compensation as well.

6. The Commission previously found that TURN substantially contributed to D.99-10-057, D.00-03-058, and D.01-03-082.

7. TURN's substantial contributions to D.99-10-057, D.00-03-058, and D.01-03-082 relate to its judicial challenge to the settlements that the Commission entered into with Edison and PG&E.

8. TURN made a substantial contribution to D.02-06-070 and D.03-04-034. TURN's federal court work, including its judicial challenge to our settlements with Edison and PG&E, is compensable.

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

10. TURN's expenses for which it requests compensation are reasonable.

11. The total of the reasonable compensation is $1,043,871.80.

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 incurred in making substantial contributions to D.99-10-057, D.00-03-058, D.01-03-082, D.02-06-070, and D.03-04-034, as adjusted herein.

2. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $1,043,871.80 as compensation for its substantial contributions to Decisions (D.) 99-10-057, D.00-03-058, D.01-03-082, D.02-06-070, and D.03-04-034.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) shall each pay TURN half of TURN's total award.

3. PG&E and Edison shall also pay interest on the award beginning September 4, 2004, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D9910057, D0003058, D0103082, D0206070 and D0304034
Proceeding(s):	A0011038, A0011056, A0010028, A9901016, A9901019, A9901034
Author:	ALJ Allen
Payer(s):	Southern California Edison Company and Pacific Gas and Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
The Utility Reform Network	June 21, 2004	$1,935,013.00	$1,043,871.80	No	(1) failure to justify hourly rate; (2) failure to discount intervenor compensation preparation time; (3) arithmetic errors; (4) failure to justify multiplier; (5) communicating with legislators not compensable; (6) communicating with press not compensable.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	310	2001	310
Robert	Finkelstein	Attorney	The Utility Reform Network	340	2002	340
Robert	Finkelstein	Attorney	The Utility Reform Network	365	2003	365
Robert	Finkelstein	Attorney	The Utility Reform Network	395	2004	395
Michel	Florio	Attorney	The Utility Reform Network	350	2001	350
Michel	Florio	Attorney	The Utility Reform Network	385	2002	385
Michel	Florio	Attorney	The Utility Reform Network	435	2003	435
Randy	Wu	Attorney	The Utility Reform Network	350	2001	350
Randy	Wu	Attorney	The Utility Reform Network	385	2002	385
Matthew	Freedman	Attorney	The Utility Reform Network	190	2001	190
Matthew	Freedman	Attorney	The Utility Reform Network	200	2002	200
Hayley	Goodson	Law student/clerk	The Utility Reform Network	125	2002	95
Michael	Strumwasser	Attorney	The Utility Reform Network	425	2000	315
Michael	Strumwasser	Attorney	The Utility Reform Network	459	2001	350
Michael	Strumwasser	Attorney	The Utility Reform Network	482	2002	385
Michael	Strumwasser	Attorney	The Utility Reform Network	513	2003	435
Michael	Strumwasser	Attorney	The Utility Reform Network	550	2004	470
Fredric	Woocher	Attorney	The Utility Reform Network	425	2000	315
Fredric	Woocher	Attorney	The Utility Reform Network	459	2001	350
Fredric	Woocher	Attorney	The Utility Reform Network	482	2002	385

						525
Harrison	Pollak	Attorney	The Utility Reform Network	250	2000	180
Harrison	Pollak	Attorney	The Utility Reform Network	250	2001	190
Johanna	Shargel	Attorney	The Utility Reform Network	333	2001	190
Johanna	Shargel	Attorney	The Utility Reform Network	350	2002	200
Johanna	Shargel	Attorney	The Utility Reform Network	375	2003	200
Daniel	Sharfstein	Attorney	The Utility Reform Network	225	2001	170
Daniel	Sharfstein	Attorney	The Utility Reform Network	225	2002	170
Lea	Rappaport Geller	Attorney	The Utility Reform Network	225	2001	170
Lea	Rappaport Geller	Attorney	The Utility Reform Network	225	2002	170
Lea	Rappaport Geller	Attorney	The Utility Reform Network	255	2003	180
Lea	Rappaport Geller	Attorney	The Utility Reform Network	295	2004	190
Lamar	Baker	Attorney	The Utility Reform Network	225	2002	170
Lamar	Baker	Attorney	The Utility Reform Network	255	2003	170
Becky	Monroe	Attorney	The Utility Reform Network	255	2003	170
Becky	Monroe	Attorney	The Utility Reform Network	295	2004	170
Joshua	Lee	Analyst	The Utility Reform Network	140	2002	100
Joshua	Lee	Analyst	The Utility Reform Network	140	2003	100