Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY for authority to update its gas revenue requirement and base rates. (U 904 G)	Application 02-12-027 (Filed December 20, 2002)
Application of SAN DIEGO GAS & ELECTRIC COMPANY for authority to update its gas and electric revenue requirement and base rates. (U 902-M)	Application 02-12-028 (Filed December 20, 2002)
Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.	Investigation 03-03-016 (Filed March 13, 2003)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-03-023

1. Summary

This decision awards The Utility Reform Network (TURN) $109,683.49 in compensation for its substantial contributions to Decision (D.) 05-03-023 on Phase Two of the test year 2004 consolidated general rate cases for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

2. Background

SoCalGas filed Application (A.) 02-12-027 and SDG&E filed A.02-12-028 on December 20, 2002, for authority to update their gas and electric revenue requirements and base rates. These applications were not filed in conformance with the Commission's rate case processing plan, but instead with specific exemptions granted as a part of previously adopted incentive ratemaking mechanisms.

Evidentiary hearings in Phase Two were held on June 1 through June 10, 2004. Testimony was received in the evidentiary hearings from numerous witnesses, and exhibits were received in evidence. Active parties filed opening and reply briefs based upon their litigation positions in the proceeding.

D.03-12-057 granted interim rate relief to SoCalGas and SDG&E[1] by establishing memorandum accounts to track any eventual difference in current rates and any increase or decrease adopted by this decision for Test Year 2004. D.04-12-009 modified D. 03-12-057 to allow interim relief for the post-test year 2005.

Pursuant to Rule 51 *et seq.* of the Commission's Rules of Practice and Procedure, the Commission adopted in D.05-03-023, with some minor modifications, two partial post-test year ratemaking settlement agreements (settlements) supported by SoCalGas, SDG&E, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Aglet, Natural Resources Defense Council (NRDC), and Southern California Generation Coalition (SCGC). The settlements resolved or otherwise disposed of post-test year ratemaking issues in

[1] On April 18, 2003, SoCalGas and SDG&E filed a Motion seeking reconsideration of the April 2, 2003 Scoping Memo. The May 22, 2003 Ruling clarified the Scoping memo as appropriate, and D.03-12-057 was necessary to grant the interim relief request.

Phase Two for both SoCalGas and SDG&E, with the exception of matters related to performance incentives and performance indicators. These matters were decided on the litigation record in the proceeding. The settlements were joined by all active parties who made recommendations in the proceeding on the issues resolved by the Settlement Agreements.

3. Requirements for Awards of Compensation

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

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) 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. (§§ 1801(1), 1803(a).)

6. The claimed fees and costs are reasonable and 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 and 6.

4. Procedural Issues

The first prehearing conference in Phase Two was held on March 14, 2003. TURN filed its timely Notice on March 10, 2003. On March 14, 2003, Administrative Law Judge (ALJ) Long ruled that TURN is a customer under the Public Utilities Code (§ 1802(b)(1)(C)) and meets the financial hardship condition (§ 1804(b)(1)). TURN filed its request for compensation (which is unopposed) on May 23, 2005, within the required 60 days of D.05-03-023. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

5. 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. (D.98-04-059, 79 CPUC2d, 628 at 653.)

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN asserts that it made substantial contributions to the proceeding concerning the adopted settlements, including: (1) the base margin settlement agreement, submitted after testimony and hearings, where the settlement reflects compromises between the applicants' litigated positions and the intervenors, including TURN's recommendations (Request, pp. 6 - 69); (2) performance measurement and performance incentive mechanisms, where the Commission adopted a five-year average similar to TURN's recommendation (Request, pp. 9 - 12); and (3) other issues where TURN did not necessarily agree with applicants or ORA and other intervenors. (See Request, generally pp. 5-11.) Specifically, the decision set a benchmark, which included "stretch factors," consistent with TURN's general policy that the benchmarks should be stringent and not easily achieved.

TURN did not necessarily prevail entirely, but its showing contributed to shape the discussion and analysis for the litigated outcome on the base margin adjustment in the ALJ's Proposed Decision (PD), and the final decision that adopted the settlement on base margin issues. The settlements as adopted by the final decision clearly reflect the movement from the applicants' end-of-litigation positions towards the positions advocated by TURN; the financial benefit to ratepayers resulting from this movement is further discussed below in relation to the productivity of TURN's participation.

TURN also made significant contributions to the performance incentive discussion and findings in both the PD and D.05-03-023. (The PD and the alternate adopted as D.05-03-023, were essentially identical on these issues.)

Thus, we find that TURN made a significant contribution to D.05-03-023.

6. Reasonableness of Requested Compensation

TURN requests $110,132.19 for its participation in this proceeding, broken-down as follows:

Request Summary	
Consulting	
William B. Marcus - 2004	50 hrs. @ $195 = $9,750.00
- 2005	0.33 hrs. @ $210 = $69.30
Jeffrey Nahigian - 2004	11.25 hrs. @ $140 = $1,575.00
Gayatri Schilberg - 2003	5.55 hrs. @ $140 = $777.00
- 2004	195.78 hrs.[2] @ $150 = $29,367.00
- 2005	6.25 hrs. @ $165 = $1,031.25
Total JBS Energy	**$42,569.55**
Counsel	
Marcel Hawiger - 2003	0.25 hrs. @ $250 = $62.50
- 2004	228.25 hrs. @ $270 = $61,627.50
- 2005	5 hours @ $340 = $1,700.00
Robert Finkelstein - 2004	8.75 hrs. @ $395 = $3,456.25
Michael Florio - 2004	1.25 hrs. @ $470 = $587.50
Total Counsel	**$67,433.75**
Expenses	
Direct	**$128.89**
Total Request	**$110,132.19**

[2] 195 hours, 46 minutes and 48 seconds. TURN need not adhere to this degree of precision in future requests for compensation.

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.

The adopted settlements in D.05-03-023 yield post-test year revenues approximately $149 million less than requested by SoCalGas and SDG&E, but significantly more than proposed by TURN. TURN advocated stringent benchmarks for electric reliability. The final decision included such stringent benchmarks, and where appropriate, a stretch factor, that were greatly influenced by TURN's advocacy. We find that TURN made substantial contributions that resulted in a significant ratepayer benefit when compared to the applicants' proposals. TURN also made a significant contribution to the adoption of reasonable incentive mechanisms. We can therefore find TURN's participation was productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Based upon TURN's assertion of the time spent by category, its request is reasonable. TURN presented a daily breakdown of the hours and a brief description of each activity. TURN characterized its time as related to:

(1) revenue indexing, (2) service quality, (3) general analysis not allocated, (4) general preparation, and (5) settlement. Thus the detailed explanation of the hours describes the work task with reference to the litigated issues and the settlement negotiation process. Therefore, we find that the hourly breakdown reasonably supports the claim for total hours.[3]

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. TURN's counsel and consultants have existing rates approved by the Commission for work performed in 2003 and 2004. We adopt those existing rates without further discussion. The requested hours for 2005 are minor and we will therefore use the current 2004 rates without setting a precedent for substantive work performed in 2005.

Adopted Rates for TURN			
Name	**Year**	**Rate**	**Cites**
William Marcus	2004 2005	$195 $195	D.05-03-016
Jeffrey Nahigian	2004	$140	D.05-06-031
Gayatri Schilberg	2003 2004 2005	$140 $150 $150	D.03-05-013 D.05-06-031
Marcel Hawiger	2003 2004 2005	$250 $270 $270	D.04-05-048 D.05-05-046
Robert Finkelstein	2004	$395	D.05-03-016
Michel Florio	2004	$470	D.05-01-029

[3] TURN correctly separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

Adopted Compensation Summary	
Consulting	
William B. Marcus - 2004	50 hrs. @ $195 = $9,750.00
- 2005	0.33 hrs. @ $195 = $64.35
Jeffrey Nahigian - 2004	11.25 hrs. @ $140 = $1,575.00
Gayatri Schilberg - 2003	5.55 hrs. @ $140 = $777.00
- 2004	195.78 hrs.[4] @ $150 = $29,367.00
- 2005	6.25 hrs. @ $150 = $937.50
Total JBS Energy	**$42,470.85**
Counsel	
Marcel Hawiger - 2003	0.25 hrs. @ $250 = $62.50
- 2004	228.25 hrs. @ $270 = $61,627.50
- 2005	5 hours @ $270 = $1,350.00
Robert Finkelstein - 2004	8.75 hrs. @ $395 = $3,456.25
Michael Florio - 2004	1.25 hrs. @ $470 = $587.50
Total Counsel	**$ 67,083.75**
Expenses	
Direct	**$128.89**
Total Request	**$109,683.49**

[4] 195 hours, 46 minutes and 48 seconds. TURN need not adhere to this degree of precision in future requests for compensation.

The itemized direct expenses submitted by TURN include costs for photocopying, postage, etc., and total $128.89. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

7. Award

We award TURN $109,683.49 as compensation for its contributions to D. 05-03-023. 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 August 6, 2005, the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their 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 or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. 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.

9. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to our decision on SoCalGas and SDG&E's Phase Two post-test year ratemaking and incentives, as described herein.

2. It is reasonable to use hourly compensation rates previously approved for intervenor compensation.

3. The itemized direct expenses were reasonable and consistent with the scope of TURN's participation in this proceeding.

4. The total of the reasonable compensation is $109,683.49. The Appendix to the opinion summarized today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to its claimed compensation, as modified herein, incurred in making substantial contributions to D.05-03-023.

2. TURN should be awarded $109,683.49 for its contribution to D.05-03-023.

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

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

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $109,683.49 as compensation for its substantial contributions to Decision 05-03-023.

2. Within 30 days of the effective date of this decision, Southern California Gas Company and San Diego Gas & Electric Company shall each pay TURN

fifty percent (50%) of the total award, $54,841.75. 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 on August 6, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

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

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**
Contribution Decision(s):	D0503023	
Proceeding(s):	A0212027 et al	
Author:	ALJ Long	
Payer(s):	Southern California Gas Company and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network (TURN)	12/30/04	$110,132.19	$109,683.49	No	Used 2004 adopted rates for minor 2005 time.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	TURN	$ 250	2003	$250
Marcel	Hawiger	Attorney	TURN	$270	2004	$270
Marcel	Hawiger	Attorney	TURN	$340	2005	$270
Robert	Finkelstein	Attorney	TURN	$395	2004	$395
Michel	Florio	Attorney	TURN	$470	2004	$470
William	Marcus	Expert	TURN	$195	2004	$195
William	Marcus	Expert	TURN	$210	2005	$195
Jeffrey	Nahigian	Expert	TURN	$140	2004	$140
Gayatri	Schilberg	Expert	TURN	2003	$140	$140
Gayatri	Schilberg	Expert	TURN	2004	$150	$150
Gayatri	Schilberg	Expert	TURN	2005	$165	$150