Decision 06-04-029 April 13, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise its Gas Rates and Tariffs to be Effective July 1, 2005. (U 39 G)	Application 04-07-044 (Filed July 30, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR MAKING A SUBSTANTIAL CONTRIBUTION TO DECISION 05-06-029

This decision awards The Utility Reform Network (TURN) $83,260.46 in compensation for its substantial contribution to Decision (D.) 05-06-029, which resolved a variety of natural gas rate issues for Pacific Gas and Electric Company (PG&E) pursuant to two settlements presented by the parties and adopted by the Commission.[1] This award represents a decrease of $6,300 from the amount requested.

1. Background

This application, a Biennial Cost Allocation Proceeding, addressed a variety of rate issues for PG&E's gas distribution operations. Issues included marginal costs, allocation of various public program costs between customer classes, through-put estimates, baseline rates, and master meter rates. The parties served testimony on a variety of issues and the Commission held five days of evidentiary proceedings on matters in dispute. Several parties

[1] D.05-07-001 corrected certain tables in D.05-06-029.

subsequently engaged in settlement discussions. TURN joined the Commission's Office of Ratepayer Advocates (ORA)[2] and PG&E in a settlement involving a variety of rate and cost allocation issues. TURN also filed a second settlement in this proceeding with PG&E and the Western Mobilehome Association (WMA). D.05-06-029 adopted both settlements presented by the parties, and resolved three other issues not covered by the settlements. This proceeding is closed.

2. 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).)

[2] Effective January 1, 2006, the Office of Ratepayer Advocates became the Division of Ratepayer Advocates (DRA), pursuant to Senate Bill 608.

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 reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

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

3. Procedural Issues

A prehearing conference was held on September 16, 2004. TURN timely filed its NOI on October 18, 2004. On December 20, 2004, Administrative Law Judge (ALJ) Malcolm ruled that TURN is a customer, pursuant to § 1802(b)(1)(C), and meets the requirement for financial hardship through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because TURN met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated July 27, 2004, in Rulemaking 04-04-003).

TURN filed its request for compensation on August 16, 2005, within 60 days of D.05-06-029 being issued. On December 9, 2005, TURN amended its request to conform to D.05-11-031, regarding claimed hourly rates. In view of the above, we find that TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we consider whether the Commission adopted one or more of the

factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. If the customer's contentions or recommendations were similar to those of another party, they should have materially supplemented or otherwise contributed to the presentation of the other party or to the development of a fuller record in a way that assisted the Commission in making its decision. 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. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.

TURN was signatory to both settlements. One resolved a variety of rate design issues, and the other residential master meter discounts. While it is difficult to know the exact contribution TURN made to the adopted settlements, it submitted testimony that corresponds to the adopted settlements, as follows:

- TURN proposed core deaveraging of 10% a year, which was included in the rate design settlement;
- TURN opposed PG&E's proposal to reduce the difference between rate tiers, instead proposing a third baseline period to address the problem of monthly bill volatility. The rate design settlement adopted variations of these proposals;
- TURN negotiated a discount of 39 cents for master metered mobilehomes;
- TURN joined PG&E in negotiating a "diversity benefit adjustment" of 3.4 cents in the master meter settlement;
- PG&E conceded TURN's proposals on the calculation of service line lengths for small customers and the calculation of design costs for new service line installations.

Regarding issues not resolved in the settlements, D.05-06-029 adopted TURN's recommendations on:

- Allocating costs of the CARE program (low-income customer discounts) on an equal cents per therm basis;
- Allocating the costs of the self-generation incentive program on an equal cents per therm basis; and
- Citing arguments TURN made in opposition to PG&E's proposal to eliminate the replacement cost adder from calculations of marginal costs.

We agree with TURN's characterization of the record in this proceeding and TURN's contribution to the final order, and therefore find that TURN made a substantial contribution to D.05-06-029. Having determined that TURN made a substantial contribution to D.05-06-029, we consider the reasonableness of TURN's requested compensation.

5. Reasonableness of Requested Compensation

TURN's amended request seeks $89,560.46 in compensation, including $17,655.55 for consulting services, as shown below.

Table 1: Attorney Expense Summary

ATTORNEY	Billing Period	Hourly Rate	Substantive Issue Work Hours Expended	Substantive Issue Work Hours Claimed	Compensation Related Hours Expended	Compensation Related Hours Claimed	Total Hours Expended	Total Hours Claimed	Percent Claimed	Total Compensation
Marcel Hawiger	2004	$270	12.25	12.25			12.25	12.25	100.00%	$3,307.50
	2005	***$320***	122.00	122.00	8.00	4.00	125.00	121.00	96.80%	***$40,320.00***
Hayley Goodson	2005	$***190***	25.75	25.75			25.75	25.75	100.00%	***$4,892.50***
Nina Suetake	2004	$***190***	19.75	19.75			19.75	19.75	100.00%	$***3,752.50***
	2005	$***190***	45.75	45.75			45.75	45.75	100.00%	$***8,692.50***
Michel Florio	2004	$470	5.50	5.50			5.50	5.50	100.00%	$2,585.00
	2005	$***470***	16.75	16.75			16.75	16.75	100.00%	$***7,872.50***
Robert Finkelstein	2004	$395	0.00	0.00	0.50	0.25	0.50	0.25	50.00%	$98.75
TOTAL							251.25	247.00	98.31%	***$71,521.25***

Table 2: Consulting Cost Summary

Expert	Time Period	Hourly Rate	Hours	Total Expenses
William B. Marcus	2003	$195	16.50	$3,217.50
	2005	$210	29.08	$6,106.80
Jeffrey Nahigian	2005	$155	53.75	$8,331.25
TOTAL			**99.33**	**$17,655.55**

Table 3: Expenses

EXPENSE CATEGORY	AMOUNT
Consultant Direct (Travel)	$104.00
Xeroxing	$214.80
Postage	$0.00
Lexis Research	$56.76
FedEx, Fax and Phone	$8.10
TOTAL	**$383.66**

In general, 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. The issues we consider to determine reasonableness are discussed below.

A. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and experts, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. Since we found that TURN's efforts made a substantial contribution to the delineated

decisions, we need not exclude from TURN's award compensation for certain issues.

B. Market Rate Standard

We next take into consideration whether 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. TURN seeks the following rates for its attorneys and experts:

Marcel Hawiger	$270/hour (2004) $320/hour (2005)
Hayley Goodson	$190/hour (2005)
Nina Suetake	$190/hour (2004 and 2005)
Michael Florio	$470/hour (2004 and 2005)
Robert Finkelstein	$395/hour (2004)
William Marcus	$195/hour (2004) $210/hour (2005)
Jeff Nahigian	$155/hour (2005)

In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005, and affirmed previously approved rates for work in 2004. D.05-11-031 established a range of rates authorized for attorneys and experts for 2004 and 2005. Generally, any increases for 2005 from previously approved rates are not authorized, except in three specific circumstances. The decision further segregated rates for attorneys into five levels of rate ranges, based on years since completion of law school: 0-2 years, 3-4 years, 5-7 years, 8-12 years, and 13 and above years. TURN amended its initial compensation request by adjusting and further clarifying its requested hourly rates in conformance with that decision.

Requested Hourly Rates for 2004

The rates TURN requested for all of its representatives who performed work in 2004, except for attorney Suetake, previously were approved in D.05-10-008, and we adopt those rates here. The requested 2004 rate of $190/hour for Suetake, who had no previously authorized rate, is within the guidelines established by D.05-11-031, and we also adopt that rate here.

Requested 2005 Hourly Rates for Florio, Suetake, and Goodson

The rates TURN requested for attorneys Florio, Suetake, and Goodson for work performed in 2005 conform to D.05-11-031. These rates do not reflect increases from 2004 rates (Goodson 2004 rate adopted in D.05-07-020) and we adopt those rates here.

Requested 2005 Rates for Marcus and Nahigian

TURN seeks to increase the hourly rate of JBS consultants Marcus and Nahigian each by $15 above previously authorized 2004 rates. TURN requests a $210 rate for Marcus for 2005 (7% increase). TURN states this rate is the current normal billing rate by JBS for Marcus, and notes that D.05-11-031 cites Marcus as an example of an intervenor representative who has "consistently requested small rate increases at rates below that of his peers," and has been paid rates that are modest for an expert with more than 20 years experience in regulatory matters. The $210/hour rate for Marcus for 2005 is clearly within the guidelines and principles established in D.05-11-031, and we adopt that rate here.

For Nahigian, TURN seeks a $155 rate for 2005 (10% increase). Like Marcus, Nahigian has more than 20 years experience in utility matters, and the requested increase is consistent with D.05-11-031. Accordingly, we adopt a rate of $155 for Nahigian for 2005.

Requested 2005 Hourly Rates for Hawiger

TURN seeks to increase attorney Hawiger's 2005 hourly rate to $320, an increase of $50 (18%) from the $270 authorized 2004 rate. TURN compares Hawiger's rate to another TURN attorney, Christine Mailloux, who previously was authorized a 2004 rate of $325. Hawiger completed law school at the same time (12 years ago) and assumes the same responsibilities as Mailloux. TURN makes its request for the $320 rate pursuant to two of the three conditions identified in D.05-11-031 (p. 17) that would permit increases from previously authorized rates:

TURN argues, first, that Hawiger's additional experience since the last authorized rate would move him to a higher level of qualification (e.g., from intermediate to senior), and that the $50 increase is reasonable to bring the representative's hourly rate within the range of the representative's peers at the higher level. Second, TURN argues that Hawiger's last authorized rate is below that of the range of rates included in D.05-11-031 for representatives with comparable qualifications, and that the $50 increase is reasonable to bring the representatives rate to at least the bottom level of the rate range.

We do not agree with TURN that Hawiger satisfies either condition. Hawiger completed law school in 1993, and therefore would have 12 years of legal experience in 2005. D.05-11-031 delineates experience levels for attorneys into five groups, based on the number of years since law school. The highest level is 13 and over years, and the second highest 8-12 years. In 2005, Hawiger was still within the 8-12 year category and would not have moved to a "higher level of qualification" based on experience, as described in D.05-11-031. For any work performed in 2006, we recognize that Hawiger will move to higher level of experience (13 plus years) and then should be eligible for a rate increase.

We also disagree that Hawiger's 2005 rate was below that of the range of rates for representatives with comparable experience. D.05-11-031 shows the range of rates for 2005 for attorneys with 8-12 years experience to be $270-$325/hour. Hawiger's rate is within this range, albeit at the extreme lower end. On this issue, D.05-11-031 emphasizes "that for any given level of qualifications, there will always be a range of rates in the market, so this increase is intended to narrow but not necessarily eliminate perceived disparities."

In view of the above, and in conformance with D.05-11-031, we authorize an hourly rate of $270 for Hawiger for work performed in 2005.

C. Productivity

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 its participation. This showing assists us in determining the overall reasonableness of the request.

TURN estimates that its participation in this proceeding saved core (residential and small business) customers about $25 million in revenues shifts from larger, non-core customers. We find this is a reasonable estimate of the savings to core customers resulting from TURN's participation.

D. Direct Expenses

The itemized direct expenses submitted by TURN include costs for photocopying, postage, telephone/fax, messenger services and total $383.66. We find these costs to be directly related to the work performed and reasonable.

6. Award

As set forth in the table below, we award TURN $83,260.46 for its participation in this proceeding, as set forth herein. This is the amount requested

by TURN except for an adjustment to the hourly rate for Hawiger, which reduces the total award by $6,300.00.[3]

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 in Federal Reserve Statistical Release H.15) commencing on October 30, 2005, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

PG&E shall pay the full amount awarded herein. We remind all intervenors that Commission staff may audit their records related to the 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.

7. 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.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Kim Malcolm the assigned ALJ in this proceeding.

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[3] Calculated on a total of 126 claimed hours for Hawiger.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. TURN made a substantial contribution to D.05-06-029, as described herein.

3. TURN requested hourly rates for attorneys and experts, as adjusted herein, that are comparable to the market rates for persons with similar training and experience.

4. The total of the reasonable compensation is $83,260.46.

5. The Appendix to this opinion summarizes 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 intervenor compensation for its claimed compensation, as adjusted herein, incurred in making a substantial contribution to D.05-06-029.

2. TURN should be awarded $83,260.46 for its contribution to D.05-06-029.

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

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $83,260.46 as compensation for its substantial contribution to Decision 05-06-029.

2. Pacific Gas and Electric Company shall pay the award within 30 days of the effective date of this decision. 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 October 30, 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.
4. Application 04-07-044 is closed.

This order is effective today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0604029	**Modifies Decision?**	
Contribution Decision(s):	D0506029		
Proceeding(s):	A0407044		
Author:	ALJ Kim Malcolm		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	8/16/2005	$89,560.46	$83,260.46	no	Excessive hourly rates

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	270	2004	270
Marcel	Hawiger	Attorney	The Utility Reform Network	320	2005	270
Michael	Florio	Attorney	The Utility Reform Network	470	2004 2005	470
Hayley	Goodson	Attorney	The Utility Reform Network	190	2004 2005	190
Nina	Suetake	Attorney	The Utility Reform Network	190	2004 2005	190
Robert	Finkelstein	Attorney	The Utility Reform Network	395	2004	395
Jeff	Nahigian	Expert	The Utility Reform Network	155	2005	155
William	Marcus	Expert	The Utility Reform Network	195	2004	195
William	Marcus	Expert	The Utility Reform Network	210	2005	210

(END OF APPENDIX)