

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known as "Contra Costa 8" Pursuant to a Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion and Operation of the Assets.

Application 05-06-029  
(Filed June 17, 2005)

(U 39 E)

**OPINION AWARDING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK FOR  
SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-06-035**

This decision awards The Utility Reform Network (TURN) \$12,549.95 in compensation for its substantial contribution to Decision (D.) 06-06-035. This proceeding is closed.

**Background**

Pacific Gas and Electric Company (PG&E) filed the subject application requesting authorization to enter into an agreement for the acceptance, construction and operation of a new combined cycle, 530 megawatt electric generating facility near Antioch, known as Contra Costa 8 (CC8). The request included related funding and cost recovery mechanisms, and an additional non-bypassable surcharge (NBC) to recover above-market costs from departing loads. The NBC was proposed for a term of 30 years to parallel the life of the

project. In D.04-12-048, we set forth policies that a 10-year term for such surcharges was reasonable.

Following the prehearing conference (PHC) in this proceeding, little opposition to the CC8 project itself was shown, but some parties were concerned over the proposed 30-year term of the NBC. PG&E, along with other parties including TURN, stipulated that the scope of the proceeding should focus solely on the term of the NBC. An evidentiary hearing (EH) was scheduled, but beforehand PG&E, TURN, the Commission's Division of Ratepayer Advocates (DRA), and California Unions for Reliable Energy (CURE) reached a settlement agreement that resolved the dispute by adopting the proposed 30-year NBC. The settlement agreement was circulated for comment. The only issue disputed in the comments was the length of the NBC: The Merced Irrigation District and the Modesto Irrigation Districts (collectively, the "MID") and City and County of San Francisco (CCSF) both argued against a 30-year NBC. An EH was held in March 2006 solely to resolve the term length of the NBC.

The arguments for a 10-year NBC were persuasive. In D.06-06-035, we adopted the settlement agreement that, for consistency with D.04-12-048, included a 10-year NBC. TURN was an active participant in the settlement and seeks compensation for that work here.

### **Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,<sup>1</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial

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<sup>1</sup> Statutory references are to the California Public Utilities Code and rule references are to the Commission's Rules of Practice and Procedure, unless otherwise indicated.

contribution to the Commission's proceeding. 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 PHC, or in special circumstances at other appropriate times that we specify. (Section 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 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. (Section 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Sections 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. (Sections 1802 (h), 1803(a).)
6. The claimed fees and costs are reasonable (Section 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to experts and advocates having comparable training and experience (Section 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 and 6.

**Procedural Requirements**

The first PHC in this proceeding was held on August 11, 2005. TURN timely filed its NOI September 12, 2005. TURN asserted financial hardship in the NOI.

Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. Pursuant to an Administrative Law Judge (ALJ) ruling issued March 9, 2006, TURN was found to be a customer, pursuant to Section 1802(b)(1)(C), and that TURN demonstrated significant financial hardship within the meaning of § 1802(g).

TURN filed its request for compensation on August 15, 2006, within 60 days of D.06-06-035 being issued.<sup>2</sup> In view of the above, we affirm the ALJ’s ruling and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

**Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commissioner adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* Section 1802(h).) 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

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<sup>2</sup> No party opposes the request.

fuller record that assisted the Commission in making its decision? (*See* Sections 1802(h), 1802.5.) As described in Section 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.<sup>3</sup>

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.<sup>4</sup> With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN claims it was an active participant throughout the proceeding, including early promotion of settlement discussions. TURN was instrumental in promoting resolution of the issues so as to expedite the Commission's approval of the facility so construction could commence on schedule. Though a settlement was reached, TURN also participated in the evidentiary hearings regarding the

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<sup>3</sup> D.98-04-059, 79 CPUC 2d, 628 at 653.

<sup>4</sup> *See* D.03-12-019, discussion D.89-03-063 (31 CPUC 2d 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).

term length of the NBC, the single issue in dispute. In addition, TURN filed opening and reply briefs along with the other settling parties.

The settlement adopted by the Commission in D.06-06-035 represented several provisions and changes recommended by TURN, in coordination with DRA. Following are the changes of particular note that will benefit ratepayers:

- Reduction of PG&E's initial annual revenue requirement from \$70.54 million to \$67.476 million.<sup>5</sup>
- Reduction of the estimate of initial capital costs from \$310 million in the original application to \$295 million. Although the settlement allows costs between \$295 million and \$305 million to be recoverable in rates, costs above \$305 million are to be shared between shareholders and ratepayers on a 90/10 basis. PG&E's original application contained no sharing mechanism for costs above the initial cap.<sup>6</sup>
- The net costs of commissioning energy will be expensed instead of capitalized.<sup>7</sup>
- Performance requirements are not precluded by the settlement and can be considered in a subsequent proceeding.<sup>8</sup>

TURN was an active participant in all phases of the proceeding and very instrumental in promoting and fashioning the settlement agreement that was ultimately adopted by the Commission. Though TURN did not recommend the

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<sup>5</sup> Motion to Adopt Settlement Agreement, December 8, 2005, p. 11.

<sup>6</sup> Motion to Adopt Settlement Agreement, December 8, 2005, p. 11.

<sup>7</sup> Motion to Adopt Settlement Agreement, December 8, 2005, p. 12.

<sup>8</sup> Motion to Adopt Settlement Agreement, December 8, 2005, p. 12.

amendment shortening the NBC from 30 years to 10 years, overall we find that TURN made substantial contributions to the final decision.

### **Contributions of Other Parties**

TURN argues that it coordinated its efforts with other public interest advocates participating in the proceeding, in particular DRA, and its compensation in this proceeding should not be reduced for duplication of the showings of other parties. TURN worked with DRA and other parties in the settlement negotiations and worked to efficiently allocate workloads and minimize duplication during the hearings and in drafting post-hearing briefs, as evidenced by the small number of hours it is claiming in this compensation request. We agree with TURN that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement or contribute to the work of other parties.

### **Reasonableness of Requested Compensation**

TURN requests \$12,549.95 for the participation of attorneys Michel Florio and Mathew Freedman, and outside consultant William Marcus of JBS Energy, Inc., as outlined in the table below:

#### **Attorney Fees:**

<u>Attorney</u>	<u>Hours</u>	<u>Total</u>
Michael P. Florio	2 hrs. @ \$470	\$ 940.00
Matthew Freedman	36.75 hrs. @ \$270	\$ 9,922.50
	6.75 hrs. @ \$135*	\$ 911.25

#### **Experts and Consultants:**

William Marcus	3.58 hrs. @ \$210	\$ 751.80
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#### **Expenses:**

Photocopying		\$ 14.40
Travel/Parking		\$ <u>24.40</u>
	<b>TOTAL</b>	<b>\$12,549.95</b>

\*Travel and Intervenor Compensation Claim Preparation @ ½ authorized hourly rate.

In general, the components of this request must constitute reasonable fees and costs of the intervenor's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

### **Hours and Costs Related to and Necessary for Substantial Contribution**

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN itemized its request and attached to its claim supporting documentation, including a brief description of each activity, for the requested amount. TURN presenting a daily breakdown of the hours of its attorneys and expert, along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

### **Market Rate Standard**

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

TURN requests hourly rates of \$470 for Florio, \$270 for Freedman, and \$210 for Marcus for work performed in 2005 (included are a small number of hours by Freedman in 2006). We previously approved these same rates in D.06-07-018 for 2005 work, and adopt them here for both years without setting a precedent for future awards for 2006 work.

### **Related Expenses**

TURN requests related expenses of \$34.80 for the costs photocopying and travel. We find these expenses are commensurate with the work performed and reasonable.

### **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 their participation. This showing assists us in determining the overall reasonableness of the request.

TURN states that the benefits of its participation in this proceeding are essentially equivalent to the value of the resource to ratepayers and the concessions granted by PG&E in the settlement agreement. Our decision confirms that CC8 will have value to ratepayers. When PG&E's initial application is compared with the terms of the settlement agreement, the savings recommended by TURN are evident, though may be difficult to quantify. Considering the millions of dollars at issue compared to TURN's cost of participation, we find that TURN's efforts have been productive.

### **Award**

We award TURN \$12,549.95, the full amount of its request, as outlined in the previous table.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount<sup>9</sup>commencing on October 29, 2006, the 75<sup>th</sup>

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<sup>9</sup> At the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

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, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

### **Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

### **Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

### **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.06-06-035 as set forth herein.
3. TURN requested hourly rates and related expenses for its attorneys and expert that are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of these reasonable fees, including reasonable costs, is \$12,549.95.
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 fees and expenses.
2. TURN should be awarded \$12,549.95 for its contributions to D.06-06-035.
3. Per Rule 14.6(c)(6), the comment period for this compensation decision may be waived.
4. Today's order should be made effective immediately, so that TURN may be compensated without further delay.
5. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$12,549.95 as compensation for its substantial contributions to Decision 06-06-035.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) shall pay this award to TURN.
3. PG&E shall also pay interest on the award beginning October 29, 2006, 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.
4. The comment period for today's decision is waived.
5. Application 05-06-029 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D.06-06-035
<b>Proceeding(s):</b>	A.05-06-029
<b>Author:</b>	ALJ Brown
<b>Payer(s):</b>	PG&E

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	Aug. 15, 2006	\$12,549.95	\$12,549.95	No	Attorney Fees

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Michel	Florio	Attorney	TURN	\$470	2005	\$470
Matthew	Freedman	Attorney	TURN	\$270	2005-2006	\$270
William	Marcus	Consultant	TURN	\$210	2004	\$210