Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (formerly called Excess Capacity).	Rulemaking 09-04-012 (Filed April 16, 2009)

DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 11-10-034

Claimant: The Utility Reform Network (TURN)	**For contribution to** Decision (D.) 11-10-034
Claimed ($): $9,252.50	**Awarded ($):** $8,921.00
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ:** David M. Gamson
Claim Filed:	December 22, 2011

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

This Decision, D.11-10-034, grants in part and denies in part a Petition for Modification of D.10-10-019 filed by the California Water Association (CWA). The Decision revises the water affiliate transaction rules. The Decision clarifies the scope of the rules, expands the list of allowable shared services, and changes the filing requirements for new affiliates.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:	December 4, 2009	Correct (30 days of the scoping ruling)
3. Date NOI Filed:	December 1, 2009	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.08-05-023 and P.10-08-016	Correct
6. Date of ALJ ruling:	April 22, 2009 and November 22, 2010	Correct
7. Based on another CPUC determination:		
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.08-05-023	Correct
10. Date of ALJ ruling:	April 22, 2009	Correct
11. Based on another CPUC determination:		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-10-034	Correct
14. Date of Issuance of Final Decision:	October 25, 2011	Correct
15. File date of compensation request:	December 21, 2011	December 22, 2011
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
TURN opposed CWA's Petition for Modification (Petition) arguing that much of what CWA included in its Petition was merely re-litigation or re-argument of issues the water utilities had "lost" in the Final Decision and more appropriate for an Application for Rehearing, if at all. TURN also argued that CWA failed to show changed circumstances to justify a modification to a decision less than a year old. The Final Decision states that the Commission will not "consider any issues here which should have been raised in an Application for Rehearing" or "simply re-litigation of issues that were decided in D.10-10-019." As discussed below, the Commission rejects several of CWA's requests for modification on this basis.	TURN Response to the CWA's Petition for Modification of April 25, 2011 (Response), at 1-3. TURN's Opening Comments to the Proposed Decision of Commissioner Peevey of August 29, 2011 (Comments on PD) at 2. D.11-10-034 at 5.	Yes
CWA requested three different modifications to the definition of "affiliate." It proposed to exclude entities with a 10% ownership, but not controlling interest. It requested that non-profit mutual water companies be excluded from the definition and it requested that the term "parent company" be excluded. Initially, TURN opposed CWA's requests except for language regarding a utility's controlling interest in a public agency. However, upon reviewing other parties' comments to the Petition, TURN withdrew its opposition to the exclusion of non-profit mutual water companies. D.11-10-034, noting TURN's position, adopts CWA's changes.	Response at 4-5. TURN Reply Comments to the proposed decision of Commissioner Peevey filed September 6, 2011 (Reply Comments on PD) at 1. D.11-10-034 at 8-10.	Yes

TURN opposed CWA's other two modifications and the Commission rejected those modifications. The Commission noted that these issues were raised during the litigation of the docket and already rejected in D.10-10-019 and that CWA "raised no new facts regarding the issues." The Commission also rejected the request to exclude the term "parent company" on substantive grounds citing to TURN regarding the lack of rationale for the change.		
CWA objected to the requirement in the new rules that water companies must file a Tier 3 advice letter with notice to the Commission that its parent company has created a new affiliate. The advice letter must demonstrate the affiliate and regulated utility's ability to comply with the affiliate transaction rules and the utility must request exemption from the rules for the affiliate at this time if warranted. CWA also proposed to narrow the notice requirement only to affiliates whose "primary business is a water industry related activity in California." TURN objected to CWA's attempt to narrow the requirements for new affiliates, but agreed that a Tier 3 advice letter may not be necessary in every instance. Instead TURN argued that a Tier 2 Advice Letter should be required for all new affiliates. The Commission rejected CWA's attempt to narrow the notice requirements to only those affiliates operating in the California water industry based on the argument made by TURN that parties previously litigated this proposal and the Commission rejected it and CWA has provided no new facts or circumstances regarding this provision. The Final Decision stated that it will modify the advice letter filing requirements by "combining the suggestions of TURN and DRA." The Final Decision agreed with TURN that a Tier 2 advice letter is acceptable for some filings, including for those affiliates where the utility is requesting an	Response at 7. Comments on PD at 3-4. D.11-10-034 at 16.	Yes

exemption from the affiliate transaction rules. For all other affiliates, the Final Decision changed the requirement to an information-only filing.		
CWA requested that the requirement for a biennial independent audit of certain affiliates, based on revenue, be conducted at ratepayer expense, not shareholder expense as the rule was adopted. Here again, TURN opposed CWA's request because its arguments were addressed in D.10-10-019 and rejected. This is re-litigation of an issue with no new facts provided by CWA. The Commission agreed.	Response at 8. D.11-10-034 at 18.	Yes
CWA argued for a modification to the rules regarding cost allocation for non-tariffed products and services. It requested that the term "indirect" be deleted from the requirement that all costs, direct and indirect, due to NTP&S not be recovered through rates. CWA argued that the tracking of indirect costs is difficult and costly. TURN disagreed with CWA's request, but made its own proposal for modification to clarify the rule. The Final Decision declined to adopt CWA's proposal noting that the record clearly shows benefit from preventing cross-subsidy between regulated and non-regulated services and therefore the Final Decision finds the importance and benefit of tracking these costs to be outweighed by the difficulty of tracking and reporting. The Commission rejected CWA's proposal (and also TURN's proposal) to modify this rule.	Response at 9-10. Reply Comments on PD at 2-3. D.11-10-034 at 20-21.	Yes

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct
c. Name of other parties (if applicable): CWA and several Class A and B investor owned water utilities.		Correct (with

	respect to the petition for modification phase)
d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: TURN and DRA discussed and coordinated our responses to the Petition and the Proposed Decision. This collaboration created an efficiency that allowed TURN to keep its hours relatively low. While we did not file joint pleadings in this docket, TURN worked with DRA. TURN notes that it had a different position on the advice letter filing requirements and, to a lesser degree, the exception of non-profit mutual water companies from this docket.	Yes

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

a. Explanation by Claimant as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation	**CPUC Verified**
Although CWA's Petition made only a small number of requested changes to D.10-10-019, the impact of those changes could have had significant financial impact on ratepayers. CWA's proposed changes through its Petition would have weakened the affiliate transaction and excess capacity rules in several significant ways, making it easier to improperly cross subsidize between regulated and non-regulated services. TURN's work to maintain strong and effective rules is in the public interest.	With minor reductions and adjustments set forth in this decision, the requested amount is reasonable as compared to the benefits realized through TURN's participation.
b. Reasonableness of Hours Claimed TURN was an active participant in docket R.09-04-012 through the advocacy efforts of Christine Mailloux and Regina Costa. Both Ms. Mailloux, as the Attorney, and Ms. Costa, as the Research Director have devoted a reasonable amount of time to defending the Commission's affiliate transaction rules from a delayed attack by CWA.	

c. Allocation of Hours by Issue TURN has allocated its hours by issue area for ease of reference. **Definition of Affiliate (AF)** 15% **Independent Audit (AU)** 10% **New Affiliate Notification (AN)** 15% **Shared Corporate Support (CS)** 10% **Indirect Costs for NTP&S (IC)** 20% **Standard of Review (SR)** 20% **General Preparation (GP)** 10%: time for activities necessary to participate in the docket that typically do not vary by the number of issues addressed, such as initial review of the Petition and the Proposed Decision. The percentages represent an allocation of time spent by issue for entries where it is not easy to identify work on individual issues. Those entries covering multiple substantive issues are marked with a "#" on the time sheets.	Yes. Allocation of hours by issue appears to be reasonable.

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate**	**Total $**
Christine Mailloux	2011	18.75	$390	D.12-03-053	$7,312.50	2011	18.15	$390	$7,078.50
Regina Costa	2011	4.75	$275	D.11-10-013	$1,306.25	2011	4.75	$275	$1,306.25
				Subtotal:	**$8,618.75**			***Subtotal:***	**$8,384.75**
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate****	**Total $**	**Year**	**Hours**	**Rate**	**Total $**
Christine Mailloux	2011	3.25	$195		$633.75	2011	2.75	$195	$536.25
				Subtotal:	**$633.75**			***Subtotal:***	**$536.25**
				TOTAL REQUEST $:	**$9,252.50**			**TOTAL AWARD $:**	**$8,921.00**

* 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. Claimant's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.
** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate (the same applies to the travel time).

C. Additional Comments on Part III:

#	Claimant	CPUC	Comment
1	X		**Payment of Intervenor Fees:** In D.11-03-046, the Commission ordered nine different water companies to pay TURN a portion of its intervenor compensation award for this docket based on 2010 water revenues. For payment of this intervenor compensation award, if granted, TURN urges the Commission to order payment from the Intervenor Compensation Fund. The Commission created the Fund for situations like these where there is a generic rulemaking affecting most if not all of the regulated industry. This award, if granted, will be small and it should not burden the Fund. If, in the alternative the Commission chooses to maintain the same payment arrangement then it should also specify that the payment reimbursement to the utility cannot be subject to a stand-alone explicit surcharge but instead included for reimbursement as part of the utilities' general rate case or some other mechanism that is appropriate for this purpose. TURN would be happy to participate in a discussion to identify such a mechanism.

D. CPUC Disallowances & Adjustments:

#	Reason
Clerical Tasks	The Commission does not compensate clerical and administrative work.[1] We disallow the estimated 0.6 hours spent by Mailloux on these tasks.[2]
Minor Miscalculation	According to the time records, Mailloux spent 2.75 hours preparing the subject intervenor compensation claim. However, TURN claims 3.25 hours for this task. We correct the miscalculation by removing 0.50 hours requested for this work.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?	Yes

1 *See*, for example, D.98-11-049, 1998 Cal. PUC LEXIS 805, *5.1.3 (Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work.)

2 *See*, Mailloux's time records of March 25, April 25, and July 29, 2011, describing clerical tasks.

FINDINGS OF FACT

1. TURN has made a substantial contribution to D.11-10-034.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is $8,921.00.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded $8,921.00.

2. Within 30 days of the effective date of this decision, San Jose Water Company, California Water Service Company, Golden State Water Company, California-American Water Company, Valencia Water Company, Park Water Company, Suburban Water Company, San Gabriel Valley Water Company, and Great Oaks Water Company shall pay The Utility Reform Network their respective shares of the award. We direct San Jose Water Company, California Water Service Company, Golden State Water Company, California-American Water Company, Valencia Water Company, Park Water Company, Suburban Water Company, San Gabriel Valley Water Company, and Great Oaks Water Company to allocate payment responsibility among themselves, based on their California-jurisdictional revenues for the 2010 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 March 5, 2012, the 75th day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision:	D1110034	
Proceeding:	R0904012	
Author:	ALJ David M. Gamson	
Payers:	San Jose Water Company, California Water Service Company, Golden State Water Company, California-American Water Company, Valencia Water Company, Park Water Company, Suburban Water Company, San Gabriel Valley Water Company, and Great Oaks Water Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	12/22/2012	$9,252.50	$8,921.00	No	Non-compensable (clerical) work; minor miscalculation

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	The Utility Reform Network	$390	2011	$390
Regina	Costa	Attorney	The Utility Reform Network	$275	2011	$275

(END OF APPENDIX)