

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas & Electric Company
To Recover the Costs Associated with Renewal of
the Diablo Canyon Power Plant Operating
Licenses.

Application 10-01-022
(Filed January 29, 2010)

**DECISION ON INTERVENOR COMPENSATION CLAIM OF
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 12-02-004**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 12-02-004
Claimed (\$): 47,639	Awarded (\$): 47,719
Assigned Commissioner: Michel Peter Florio	Assigned Administrative Law Judge (ALJ): Robert Barnett

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision grants a motion to dismiss the Application for ratepayer financed license renewal funding for the Diablo Canyon nuclear power plant.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	Commission Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	April 14, 2010	Correct
2. Other Specified Date for Notice of Intent (NOI):		
3. Date NOI Filed:	May 14, 2010	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	See B.1	Application (A.) 08-03-015
6. Date of ALJ ruling:	See B.1	09/12/2008
7. Based on another Commission determination (specify):	See B.1	Correct
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:	See B.1	A. 08-03-015
10. Date of ALJ ruling:	See B.1	09/12/2008
11. Based on another Commission determination (specify):	See B.1	ALJ ruling on 09/12/2008 in A.08-03-015
12. Has the Claimant demonstrated significant financial hardship?		Yes

Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-02-004	Correct
14. Date of Issuance of Final Order or Decision:	February 7, 2012	Correct
15. File date of compensation request:	April 9, 2012	Correct
16. Was the request for compensation timely?		Yes

B. Response to Claimant's Comments on Part I:

#	Claimant	Commission	Comment
1	TURN	Correct	Although TURN filed a timely NOI in this proceeding, the assigned ALJ never issued a ruling on the notice of intent. TURN's showing on financial hardship and customer status was contained in that NOI. TURN has previously been found to satisfy these two standards -- for example see ALJ ruling on 9/12/2008 in A.08-03-015.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's contribution to the final decision

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by Commission
<p>1. SUSPENSION OF PROCEEDING</p> <p>In the wake of the nuclear crisis at Fukushima, TURN joined with Pacific Gas and Electric Gas Company (PG&E) to request that the Commission suspend all further activity in the proceeding until PG&E has completed seismic studies for Diablo Canyon. TURN supported the suspension and later filed comments in support of</p>	<p>Citations</p> <p>Joint Motion of TURN and PG&E to suspend the proceeding pending the completion of seismic studies, June 9, 2011.</p> <p>TURN opening comments on the Proposed Decision of ALJ Barnett, January 10, 2012</p> <p>D.12-02-004, at 6-7; Ordering Paragraphs #1 and 2.</p>	Correct

<p>the proposed dismissal of the proceeding. In adopting its final decision, the Commission decided to dismiss the application without prejudice and preserve the evidentiary record for future consideration when PG&E ultimately files a motion to reopen the proceeding. There is no material difference between the suspension proposed by TURN and PG&E and the dismissal without prejudice (subject to a motion to reopen).</p>		
<p>2. REGULAR UPDATES TO COST-EFFECTIVENESS ANALYSIS</p> <p>TURN’s testimony expressed concerns that PG&E made overly optimistic assumptions about future operating performance and costs at Diablo Canyon. TURN highlighted capacity factors, projections of capital and O&M costs, expected requirements by the State Water Board relating to Once Through Cooling, and possible seismic upgrades. After reviewing PG&E’s assumptions, TURN identified a number of circumstances in which the costs to ratepayers of continuing to operate the plant through the license renewal period would exceed the benefits. To protect ratepayers against the possibility that PG&E’s assumptions prove overly optimistic, TURN proposed</p>	<p>Citations</p> <p>Direct Testimony of David A. Schlissel on behalf of TURN, August 18, 2010</p> <p>Testimony of David A. Schlissel on behalf of TURN in support of the Proposed Settlement, February 18, 2011</p> <p>Joint motion of PG&E, DRA and TURN for approval of settlement agreement, November 16, 2010, at 3-4, 6; Settlement agreement at 2-3.</p>	<p>Correct</p>

<p>the adoption of a rebuttable presumption that O&M or capital costs in excess of the forecast, or plant performance below PG&E's forecast, be deemed unreasonable. To the extent that Diablo Canyon costs are higher, or performance is lower, than assumed in the current forecasts, the Commission should consider cost sharing between ratepayers and shareholders.</p> <p>The joint TURN-DRA-PG&E settlement includes an agreement that PG&E will update its cost-effectiveness analysis for Diablo Canyon in each future General Rate Case through 2024 and in any proceeding in which PG&E seeks approval for new capital projects or annual O&M expenditures at Diablo Canyon in excess of \$20 million. This updated showing would compare Diablo Canyon operations with alternative resource options and reconcile any of the cost assumptions relied upon in A.10-01-022 with revised forecasts. The showing would also require PG&E to list any known unquantified risks that may significantly impact the economics of project operations through the forecasted period. The settlement would provide far greater transparency with respect to cost trends, allow the Commission to</p>		
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<p>more easily track PG&E’s evolving cost projections over time, and provide regular opportunities to reconsider the cost effectiveness of continuing to spend money on Diablo Canyon.</p> <p>Although the settlement was not adopted by the Commission, the reason for this outcome was unrelated to TURN’s work and could not have been reasonably foreseen. The tsunami and partial meltdown of nuclear reactors at Fukushima in March of 2011 caused the Commission to delay consideration of the settlement and ultimately dismiss the application pending the outcome of seismic studies. TURN submits that work on this settlement represents a substantial contribution in light of the circumstances in this case. Attachment 4 to this request provides a detailed summary of Commission precedents supporting this outcome.</p>		
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	Commission Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Y	Correct
b. Were there other parties to the proceeding with positions similar to yours?	N	Correct
c. If so, provide name of other parties:		

<p>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:</p> <p>Throughout the course of the proceeding, TURN communicated with DRA to discuss positions, schedule, and strategy. Based on these exchanges of information, TURN’s testimony addressed unique issues in an effort to complement (rather than duplicate) DRA’s positions. While DRA addressed the overall cost of the license renewal application process, TURN focused on the cost effectiveness of continuing to operate Diablo Canyon through 2044. After testimony was submitted, TURN and DRA coordinated on a joint settlement strategy and successfully negotiated a settlement with PG&E on all issues raised by the application. The settlement addressed the unique issues raised by both TURN and DRA in testimony.</p> <p>The other parties in this proceeding were the Alliance for Nuclear Responsibility and Californians for Renewable Energy. These parties did not sign onto the settlement and opposed its adoption.</p> <p>Since TURN actively coordinated with DRA and worked cooperatively to negotiate a settlement agreement that addressed issues raised separately by both parties, the Commission should conclude that there was no duplication of effort.</p>	<p>The Commission makes no reduction to TURN’s claim for unnecessary duplication of effort. TURN’s claim of close coordination with other parties is confirmed by our review of the timesheets.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>a. Explanation by Claimant</p> <p>As explained in the substantial contribution section, TURN’s participation led to two specific outcomes – (1) a multi-party settlement agreement that was submitted but not considered due to unforeseen intervening events at the Fukushima nuclear reactor in Japan and (2) the dismissal of PG&E’s application without prejudice and preserving the evidentiary record.</p> <p>The provisions in the settlement related to cost effectiveness represent an important ratepayer protection. In past cases involving nuclear power plants, PG&E and other utilities have</p>	<p>Commission Verified</p> <p>We agree with the benefit to ratepayers that TURN lists here, and we agree that the benefits to ratepayers will outweigh the cost. TURN completed</p>
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<p>routinely provided cost effectiveness analyses without reference to how the assumptions and cost trends have evolved. As a result, there is little accountability for long-term cost and performance forecasts. The settlement would require PG&E to provide regular updates to the Diablo Canyon cost effectiveness analysis and explain why actual costs have deviated from the original forecasts. The feedback loop that would be established through this mechanism should allow the Commission to apply more informed scrutiny to utility requests for additional spending at these units and provide greater precision in tracking the ongoing cost-effectiveness of Diablo Canyon over time.</p> <p>The dismissal of the application saves ratepayers between \$80-85 million because PG&E does not have authorization to collect this money from ratepayers for the purposes outlined in the application. These savings are real, immediate and could end up being permanent if PG&E fails to ultimately gain approval of its application.</p>	<p>its work in good faith and had it not been for the unforeseen nuclear catastrophe in Japan, the settlement TURN entered into with PG&E and DRA would likely have been approved.</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>Most of the time invested by TURN in this proceeding relates to scrutinizing PG&E’s cost effectiveness analysis, offering critiques, and suggesting alternative mechanisms for ratepayer protection. For a proceeding that began in 2010 and ended in early 2012, the total number of hours devoted by TURN is relatively modest. Once the disaster at Fukushima occurred, TURN significantly scaled back its participation in recognition of the changed circumstances and only devoted 13.25 hours (out of almost 200 hours in the case) in the post-tsunami period. These hours were focused almost entirely on supporting a suspension or dismissal of the proceeding to allow seismic studies to be completed.</p> <p>TURN is seeking compensation for 10 hours of work related to preparing this intervenor compensation request. While slightly higher than the amount of hours TURN typically seeks for a request of this magnitude, the additional time was required in order to address the unusual circumstances associated with the proceeding (the post-settlement dismissal due to intervening</p>	<p>TURN’s hours and costs are reasonable and warrant compensation.</p>

events) and to research prior decisions addressing similar circumstances.		
<p>c. Allocation of Hours by Issue</p> <p>TURN has allocated all of our attorney and consultant time by issue area or activity, as evident on our attached timesheets. The following codes relate to the following specific substantive issue and activity areas addressed by TURN:</p>		<p>TURN’s allocation of hours in their time sheets are reasonable and sufficiently correspond to substantive issues that TURN contributed to in D.12-02-004.</p>
Code	Explanation	
Cost Effectiveness (CE)	Review of the CE of continuing to operate Diablo Canyon for the duration of a renewed license. Involves all analysis of PG&E cost and performance projections, assumptions regarding seismic upgrades and Once Through Cooling requirements. Includes TURN’s proposed ratepayer protection mechanism.	
SETT	Work related to the negotiation of the settlement agreement and activities in support of that agreement including work on joint filings and coordination of the settlement process.	
DISMISS	Work related to the PG&E-TURN motion to suspend the proceeding and the motions to dismiss filed by other parties.	
General Participation (GP)	GP work essential to participation that typically spans multiple issues and/or would not vary with the number of issues that TURN addresses. This can include reading the initial application, initial discovery, Commission rulings, participating in prehearing conferences, and reviewing pleadings submitted by other parties.	
COMP	Preparation of compensation request and TURN’s notice of intent.	

Based on a review of time sheets, TURN testimonies and correspondence, TURN estimates the following allocation of total attorney resource time by issue or activity in this proceeding (totals do not equal 100% due to rounding):		
Primary Issue	Hours	Approximate Allocation of Time
Cost Effectiveness (CE)	124	68%
Settlement (Sett)	23.50	13%
Motion to Dismiss (Dismiss)	5.25	3%
General Preparation (GP)	29.75	16%

B. Specific Claim*:

Claimed						CPUC Award		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Matthew Freedman	2010	53.75	\$325	D.10-09-044	\$17,469	53.75	\$325	\$17,469.00
Matthew Freedman	2011	13.75	\$350	See Note C.1	\$4,813	13.75	\$350	\$4,813.00
Matthew Freedman	2012	3.00	\$350	See Note C.1	\$1,050	3.00	\$360	\$1080.00
David Schlissel	2010	105.00	\$200	See Note C.1	\$21,000	105.00	\$200	\$21,000.00
David Schlissel	2011	7.00	\$200	See Note C.1	\$1,400	7.00	\$200	\$1,400.00
Subtotal:					\$45,732	Subtotal:		\$45,762.00

OTHER FEES								
OTHER HOURLY FEES Claimed (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
[Person 1]			\$					
[Person 2]								
Subtotal:						Subtotal:		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Matthew Freedman	2010	0.75	\$162.5	D.10-09-044 (@50%)	\$122	.75	\$162.50	\$122.00
Matthew Freedman	2012	10	\$175	See Note C.1 2 (@50%)	\$1,750	10	\$180.00	\$1800.00
Subtotal:					\$1,872	Subtotal:		\$1,922
COSTS								
#	Item	Detail			Amount	Amount		
1	Photocopies	See Attachment 3			\$26			\$26
2	Postage	See Attachment 3			\$9			\$9
Subtotal:					\$35	Subtotal:		\$35.00
TOTAL REQUEST \$:					\$47,639	TOTAL AWARD \$:		\$47,719.00 ¹
<p>* 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 seeks 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.</p>								

¹ Rounded to the nearest dollar.

** Reasonable claim preparation and travel time typically compensated at ½ of preparer's normal hourly rate.

C. Commission Disallowances, Adjustments, Adoptions and Comments:

#	Reason
Adoption of Matthew Freedman's hourly rates for 2010-2012	TURN seeks an increase in hourly rates for Freedman's 2011-2012 work here. Freedman moved from the 8-12 year experience range to the 13+ range of \$300-\$535 established in D.08-04-010 for attorneys with comparable market rates having comparable training and experience and offering similar services. TURN's request of \$350 an hour for Freedman's 2011 work is reasonable and adopted here. TURN has also requested a rate of \$350 an hour for Freedman's 2012 work. Additionally, we apply the recent Commission approved Resolution ALJ-281 of September 13, 2012, to Freedman's hours during the 2012 Calendar year. Resolution -281 applies a Cost-of-Living Adjustment (COLA) of 2.2% to intervenor rates for work done during the 2012 calendar year. This COLA adjustment, after rounding, results in a new rate for Freedman for 2012 of \$360 per hour.
Adoption of David's Schissel's hourly rates for 2010 and 2011	The Commission has previously adopted an hourly rate of \$180 for David Schissel's 2004-2008 work. We apply the provisions of D.08-10-040 at 8 which lists five circumstances where intervenor representatives (attorneys and experts) with an hourly rate previously adopted by the Commission would qualify for a rate increase. The circumstance fully supported by the record is circumstance #2, where a step increase is limited to two annual increases of no more than 5% each year within any given level of experience for each individual. Resolution ALJ-267 disallowed cost-of-living increases for 2011 intervenor work. We apply a 5% step increase to Schissel's adopted 2008 (D.11-07-022) hourly rate of \$180 and round the resulting figure to the nearest \$5.00 increment, achieving a reasonable hourly rate of \$200. We adopt this rate for Schissel's 2011 rate.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))

A. Opposition: Did any party oppose the Claim?	No
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B. Comment Period: Was the 30-day comment period waived (See Rule 14.6(c)(2).)	Yes
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Findings of Fact

1. Claimant has made a substantial contribution to D.12-02-004.
2. The requested hourly rates for Claimant's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. It is reasonable to award claimant \$47,719.00 for its contributions to D.12-02-004.

Conclusion of Law

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 \$47,719.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay The Utility Reform Network the total award. 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 June 22nd, 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 order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D.12-02-044	
Proceeding(s):	A.10-01-022	
Author:	Robert Barnett	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network	04/09/2012	\$45,731.00	\$47,699.00	No	Adjusted Matthew Freedman's hourly rate in 2012 to include the Resolution ALJ-281 cost of living adjustment.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Matthe w	Freedman	Attorney	The Utility Reform Network	\$325	2010	\$325
				\$350	2011	\$350
				\$350	2012	\$360
David	Schissel	Expert	The Utility Reform Network	\$200	2010/2011	\$200

(END OF APPENDIX)