

Decision \_\_\_\_\_

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

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.

Application 08-11-001  
(Filed November 4, 2008)

And Related Matters.

Rulemaking 06-02-013  
Rulemaking 04-04-003  
Rulemaking 04-04-025  
Rulemaking 99-11-022

**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISIONS (D.) 11-07-010, D.11-10-016 AND D.12-03-006**

<b>Claimant: The Utility Reform Network (TURN)</b>	<b>For contribution to Decisions (D.) 11-07-010, D.11-10-016 and D.12-03-006</b>
<b>Claimed (\$): \$8,342.00</b>	<b>Awarded (\$): \$8,365.00</b>
<b>Assigned Commissioner: Mark J. Ferron</b>	<b>Assigned ALJ: Yip-Kikugawa</b>

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:** This Request for Compensation covers work associated with three decisions following up on D.10-12-035, the Commission decision approving the Qualifying Facility and Combined Heat (QF/CHP) and Power Settlement Agreement. The settling parties included the major electric utilities, representatives of the QF/CHP community, the Division of Ratepayer Advocates (DRA) and TURN.

In D.11-07-010, the Commission granted the petition for modification jointly filed by the settling parties and California Municipal Utilities Association (CMUA) proposing to clarify

the extent to which transferred Municipal Departing Load (MDL) customers would be responsible for non-bypassable charges, such that new MDL customers would not be responsible for non-bypassable charges. In D.11-10-016, the Commission agreed that removing certain language it had added to D.11-07-010 would eliminate uncertainty about the future of the QF/CHP agreement and avoid further delay of the settlement effective date. And in D.12-03-006, the Commission granted motions seeking to withdraw various petitions for modification, and closed the proceedings, pursuant to Ordering Paragraph 6 of D.10-12-035.

**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	May 19, 2011 (in A.08-11-011)	Correct
4. Was the NOI timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:		
6. Date of ALJ ruling:		
7. Based on another CPUC determination (specify):	D.11-12-016 (see note below)	Correct
8. Has the Claimant demonstrated customer or customer-related status?		Yes
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:		
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):	D.11-12-016 (see note below)	Correct
12. Has the Claimant demonstrated significant financial hardship?		Yes

<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.12-03-006	Correct
14. Date of Issuance of Final Order or Decision:	March 12, 2012	Correct
15. File date of compensation request:	May 4, 2012	Correct
16. Was the request for compensation timely?		Yes

**C. Additional Comments on Part I:**

#	Claimant	CPUC	Comment
	X		In D.11-12-016 the Commission awarded compensation to TURN for its substantial contributions to the decisions issued through early 2011. The decision indicated that TURN's NOI was timely filed, and that TURN met all other conditions for eligibility for an award of intervenor compensation. D.11-12-016, at 2-3. Pursuant to Rule 17.2 of the Commission's Rules of Practice and Procedure, having been found eligible for an award of compensation in the earlier phase of this proceeding means TURN remains eligible in this later phase of the same proceeding.

**PART II: SUBSTANTIAL CONTRIBUTION****A. Claimant's description of its contribution to the final decision.**

<b>Contribution</b>	<b>Specific References to Claimant's Presentations and to Decision</b>	<b>Showing Accepted by CPUC</b>
<p>In early 2011 the settling parties CMUA engaged in discussions seeking to resolve the issues raised by CMUA's application for rehearing of D.10-12-035. The discussions proved fruitful, and in April 2011, the settling parties and CMUA filed a petition for modification of D.10-12-035 proposing to clarify the extent to which transferred Municipal Departing Load (MDL) customers would be responsible for non-bypassable charges, and provided that new MDL customers would not be responsible for non-bypassable charges.</p> <p>In D.11-07-010, the Commission granted the petition for modification jointly filed by the settling parties and CMUA proposing to clarify the extent to which transferred MDL customers would be responsible for non-bypassable charges, such that new MDL customers would not be responsible for</p>	<p><i>Joint Petition for Modification of Decision No. 10-12-035</i>, filed 4/1/11.</p> <p>D.11-07-010, issued July 15, 2011.</p>	Yes

non-bypassable charges.		
<p>The Commission included language in D.11-07-010 suggesting that the new agreement between the settling parties and CMUA could result in cost shifting from MDL to Direct Access (DA) and Community Choice Aggregation (CCA) customers. The decision stated that should such unrecovered costs attributable to MDL appear in the future, those costs would be the responsibility of the settling parties.</p> <p>Shortly thereafter the settling parties, joined by CMUA, petitioned to modify D.11-07-010 to correct identified errors in the decision's treatment of cost responsibility, and to set as the settlement effective date the date on which a Commission order granting the petition becomes final and non-appealable.</p> <p>In D.11-10-016, the Commission agreed that removing the identified language from the decision would be consistent with the absence of cost shifting risk given the time limits represented by the dates included in the Settlements, and would eliminate uncertainty about the future of the QF/CHP agreement. It also agreed with the Settling Parties that the settlement effective date would be the date on which the decision became final and non-appealable.</p>	<p>D.11-07-010, at 7 and associated Conclusions of Law 3 and 4.</p> <p><i>Joint Petition for Modification of Decision 11-07-010 and Request to Establish Settlement Effective Date and Grant Motion for Closure</i>, filed 7/28/11.</p> <p>D.11-10-016, Finding of Fact 8; Conclusions of Law 1-3.</p>	Yes
<p>The Commission issued D.11-10-043 on October 24, 2011, dismissing the last remaining applications for rehearing of D.10-12-035. This decision became final and non-appealable on November 23, 2011, which thereby became the settlement effective date. In early December 2012 several motions were filed by all or subsets of the settling parties seeking to withdraw pending petitions and other pleadings that were rendered moot with the final effectiveness of settlement.</p> <p>The Commission issued D.12-03-006 granting each of the motions and closing the proceeding.</p>	<p><i>Joint Parties' Motion to Withdraw Pending Motions, Pleadings and Petitions for Modification in Rulemaking 99-11-022 and to Close Docket</i>, 12/2/11; <i>Motion to SCE Withdraw Claims and of Settling Parties to Close Docket</i>, 12/2/11; <i>Motion of Settling Parties to Withdraw Petitions for Modification and to Close Dockets R.04-04-003 and R.04-04-025</i>, 12/6/11.</p> <p>D.12-03-006, Conclusions of Law 1-7.</p>	Yes

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was DRA a party to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>b. Were there other parties to the proceeding with positions similar to yours?</b>	<b>Yes</b>	<b>Correct</b>
<p><b>c. If so, provide name of other parties:</b> The settling parties included the three major electric utilities Pacific Gas and Electric Company (PG&amp;E), Southern California Edison Company (SCE) and San Diego Gas &amp; Electric Company (SDG&amp;E), four representatives of the QF industry (the California Cogeneration Council, Cogeneration Association of California, Energy Producers and Users Coalition, and Independent Energy Producers Association), and DRA. CMUA joined with the settling parties in negotiating and presenting for the Commission’s approval an agreement that obviated CMUA’s pending application for rehearing. Of the settling parties, only TURN and DRA represented exclusively the interests of ratepayers.</p>		
<p><b>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how Claimant’s participation supplemented, complemented, or contributed to that of another party:</b></p> <p>As with TURN’s earlier request for compensation in this matter, the demonstration regarding potential duplication of effort will be somewhat different than usual because the entirety of the substantive work included in this request occurred in the context of discussions among the settling parties about how to successfully implement the settlement and other strategic issues regarding matters related to the settlement. Thus there was never a TURN-only work product other than edits TURN prepared to documents other parties had taken the lead in drafting.</p> <p>TURN worked very closely with all of the other settling parties, including DRA, to avoid duplication and to ensure that our participation supplemented, complemented or contributed to that of the other parties. Once again, TURN generally took advantage of opportunities to have other settling parties make the initial drafting effort to the various pleadings that were jointly submitted, and thus limited our drafting activities to review and editing of initial drafts prepared by others. The very limited number of hours included in this request is evidence that TURN was successful in its efforts to coordinate with the other settling parties.</p> <p>In sum, TURN submits that the Commission should find that TURN took all reasonable steps to avoid duplication and, to the extent that there was any overlap, TURN’s work supplemented and complemented that of DRA and the other parties opposed to the application.</p>		<b>Yes</b>

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>a. Explanation of Claimant of how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation:</b>	<b>CPUC Verified</b>
<p>In TURN’s earlier request for compensation in this proceeding, TURN explained how our participation in the efforts to develop and achieve adoption of the settlement achieved very substantial benefits, although it is more difficult than usual to precisely quantify such benefits. In D.11-12-016 (at. 9), the Commission found that costs of participation totaling approximately \$335,000 were reasonable as compared to the benefits realized through TURN’s participation. Here TURN’s efforts were devoted to preserving the benefits achieved through the settlement by removing the uncertainty caused by challenges to that settlement and by setting the settlement effective date at the earliest date practicable under the circumstances. Given the very small amount of costs of participation in the post-settlement work covered by this request, the Commission should find that those costs bear a reasonable relationship to preservation of the benefits recognized in D.11-12-016.</p>	<p><b>Yes</b></p>
<p><b>b. Reasonableness of Hours Claimed.</b></p> <p>This Request for Compensation includes less than 20 hours, reflecting the time that TURN’s attorney devoted to the various tasks associated with the development and implementation of strategies to implement the Settlement Agreement as smoothly and as expeditiously as practicable. These tasks included a number of conference calls and one lengthier in-person meeting among the settling parties, a relatively large volume of e-mails as the settling parties developed and discussed strategies seeking to implement those strategies, and the review and editing of the pleadings associated with the three decisions covered by this request. Because TURN was able to rely upon other settling parties to do the bulk of the drafting of the various pleadings (and thanks to the high quality of the initial draft typically produced by the drafting party), TURN was able to keep the number of hours we devoted to these tasks to a relative minimum.</p> <p>TURN’s request also includes 4.5 hours devoted to the preparation of this request for compensation. This is a very reasonable figure given that the request covers three separate decisions, each of which had a slightly different procedural path leading thereto.</p>	<p>Yes</p>
<p><b>c. Allocation of Hours by Issue</b></p> <p>TURN typically allocates its daily time entries by activity codes to better reflect the nature of the work reflected in each entry. Here all of the substantive work included in this request for compensation would have been given the same activity</p>	<p>We agree that all work here was associated with a single issue – implementation of a settlement agreement. In</p>

<p>code – Settlement Implementation. To the extent there were sub-categories of time devoted to the work covered by this request, they were delineated not by issue but rather by the relief sought – the original petition for modification to seek implementation of the agreement between the settling parties and CMUA; the follow-on petition for modification spawned by the unanticipated language added to D.11-07-010; and the various pleadings addressed in D.12-03-006. Another sub-category could be the general strategy and implementation discussions that were the topic of the September 19, 2011 meeting among the settling parties and Commission staff – the meeting plus the discussions and preparation leading up to the meeting total 5.5 hours of the 15.5 hours of substantive work included in this request. Based on the number of hours recorded during the period leading up to each of these decisions, the allocation would be approximately:</p> <ul style="list-style-type: none"> <li>• 10% to work leading up to D.11-07-010;</li> <li>• 50% to work leading up to D.11-10-016;</li> <li>• 35% to the general strategy discussions among the settling parties that culminated in the September 19, 2011 meeting; and</li> <li>• 5% to work leading up to D.12-03-006.</li> </ul> <p>TURN re-emphasizes that all of this work was associated with the single activity or issue area of achieving successful implementation of the settlement. However, should the Commission wish to consider an allocation of the work to sub-categories of that single activity or issue area, TURN submits the allocation described above as a reasonable allocation. If the Commission believes that a different approach to issue-specific allocation is warranted here, TURN requests the opportunity to supplement this section of the request.</p>	<p>this instance, TURN has appropriated allocated its hours among the different types of relief sought. We find the hours allocated to each type of relief to be reasonable.</p>
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**B. Specific Claim:\***

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Finkelstein	2011	15.5	\$470	Resolution ALJ-267; D.12-03--024, at 13	\$7,285	15.5	\$470	\$7,285
<b>Subtotal:</b>					<b>\$7,285</b>	<b>Subtotal:</b>		<b>\$7,285</b>

<b>INTERVENOR COMPENSATION CLAIM PREPARATION **</b>								
<b>Item</b>	<b>Year</b>	<b>Hours</b>	<b>Rate</b>	<b>Basis for Rate*</b>	<b>Total \$</b>	<b>Hours</b>	<b>Rate</b>	<b>Total \$</b>
Robert Finkelstein	2012	4.5	\$235	Half of approved hourly rate for 2011	\$1,057	4.5	\$240 <sup>1</sup>	\$1,080.00
<b>Subtotal:</b>					<b>\$1,057</b>	<b>Subtotal:</b>		<b>\$1,080.00</b>
<b>TOTAL REQUEST \$:</b>					<b>\$8,342</b>	<b>TOTAL AWARD \$:</b>		<b>\$8,365.00</b>

\*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.

\*\*Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate.

<b>Attorney</b>	<b>Date Admitted to CA BAR</b>	<b>Member Number</b>
Robert Finkelstein	June 13, 1990	146391

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the Claim?</b>	No
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<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?</b>	Yes
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**FINDINGS OF FACT**

1. The Utility Reform Network has made a substantial contribution to Decisions (D.) 11-07-010, D.11-10-016 and D.12-03-006.
2. The requested hourly rates for The Utility Reform Network’s representatives 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.

<sup>1</sup> Abiding by Resolution ALJ-281, 2012 hourly rates have been raised to reflect the 2.2% Cost-of-Living Adjustment adopted by the resolution. The full hourly rate for Mr. Finkelstein for 2012 should be set at \$480. Thus, the half-time rate is set at \$240 per hour for work Mr. Finkelstein completed in 2012.

4. The total of reasonable contribution is \$8,365.00.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

**ORDER**

1. The Utility Reform Network is awarded \$8,365.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall pay The Utility Reform Network their respective shares of the award, based on their California-jurisdictional electric revenues for the 2011 calendar year, to reflect the year in which the proceeding was primarily litigated.” Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 18, 2012, the 75<sup>th</sup> day after the filing of The Utility Reform Network’s request, and continuing until full payment is made.
3. The comment period for today’s decision is waived.
4. This decision is effective today.

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

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>	<b>No</b>
<b>Contribution Decision(s):</b>	D1107010, D1110016, D1203006		
<b>Proceeding(s):</b>	A0811001, R0602013, R0404003, R0404025, R9911022		
<b>Author:</b>	ALJ Amy C. Yip-Kikugawa		
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company		

**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 (TURN)	May 4, 2012	\$8,342.00	\$8,365.00	No	Resolution ALJ-281.

**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>
Robert	Finkelstein	Attorney	TURN	\$470	2011	\$470
Robert	Finkelstein	Attorney	TURN	\$470	2012	\$480

**(END OF APPENDIX)**