

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 10-05-004
(Filed May 6, 2010)

DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 12-05-036 AND DECISION 13-11-026

Claimant: The Utility Reform Network	For contribution to D.12-05-036 and D.13-11-026
Claimed (\$): \$11,026.98	Awarded (\$): \$11,026.98
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Katherine MacDonald

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: D.12-05-036 adopted a new definition of peak load for purposes of calculating the net energy metering cap, and also ordered a temporary suspension of the net energy metering program at the end of 2014. D.13-11-026 dismissed the applications for rehearing of D.12-05-036 and vacated that decision due to the intervening passage AB 327.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:		August 12, 2010
2. Other Specified Date for NOI:	Eligibility from R.08-03-008	September 13, 2010
3. Date NOI Filed:		N/A

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4. Was the notice of intent timely filed?		Yes, See Comment.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.06-03-004	Verified
6. Date of ALJ ruling:		May 16, 2006
7. Based on another CPUC determination (specify):		
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:	R.06-03-004	P.10-08-016
10. Date of ALJ ruling:	May 16, 2006	November 22, 2010
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.13-11-026	Verified
14. Date of Issuance of Final Decision:	November 15, 2013	Verified
15. File date of compensation request:	January 13, 2014	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
4		X	The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judges, issued November, 9, 2010, stated that parties previously found eligible to request intervenor compensation in R.08-03-008 shall remain eligible in this proceeding and do not need to file a notice of intent within 30 days (of the prehearing conference), provided there are no material changes in their by-laws or financial status. TURN is in this category of parties.
15	Verified		TURN has previously requested and received compensation for contributions to prior decisions in this docket.

PART II: SUBSTANTIAL CONTRIBUTION**A. Claimant's contribution to the final decision** (see § 1802(i), § 1803(a) & D.98-04-059)

Intervenor's Claimed Contribution	Citation to Decision or Record	CPUC Comments
<p>1. D.12-05-036:</p> <p>TURN argued that the original Proposed Decision was legally deficient in its interpretation of the term "aggregate customer peak demand" and in its statutory interpretation.</p> <p>The Commission agreed with TURN that the term was ambiguous, but ultimately disagreed with TURN's statutory analysis concerning the definition of this term.</p>	<p>TURN Comments on Proposed Decision, May 1, 2012</p> <p>Compare original PD (April 11, 2012) with final D.12-05-036</p> <p>D.12-05-036, p. 11 ("We agree with The Utility Reform Network (TURN) that the words of the statute are "inherently ambiguous" in this regard. However, we agree with the Joint NEM Parties that it seems unlikely, given the choice of words, that the Legislature intended the words "aggregate customer peak demand" to simply mean coincident peak demand.")</p>	<p>Verified</p>
<p>2. D.13-11-026</p> <p>TURN had sought rehearing of the conclusion that the phrase "aggregate customer peak demand" should be interpreted as non-coincident peak demand. TURN argued that the Commission's decision constituted legal error based on incorrect statutory interpretation of legislative intent.</p> <p>The Commission dismissed the applications for rehearing as "moot" since the Commission vacated Decision 12-05-036. Provisions of AB 327 rendered the decision "unnecessary." AB 327 made explicit the legislative intent behind the language.</p>	<p>TURN Application for Rehearing, June 29, 2012, <i>passim</i>.</p> <p>D. 13-11-026, p. 2-4.</p>	<p>Verified</p>

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

	Claimant	CPUC Verified
a. Was ORA a party to the proceeding? ¹	Y	Verified
b. Were there other parties to the proceeding?	Y	Verified
c. If so, provide name of other parties: There were multiple parties, primarily representing the solar industries. Please see service list for complete list of parties.		Verified
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. In a proceeding involving multiple participants, it is virtually impossible for TURN to completely avoid some duplication of the work of other parties. In this case, TURN took all reasonable steps to keep such duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties. Indeed, TURN primarily monitored this phase of the proceeding. TURN only participated on the issue of the definition of peak load in the NEM statute after the issuance of a Proposed Decision, which, in our opinion, was based on erroneous statutory interpretation. TURN provided independent legal analyses concerning the legislative intent of the net energy metering statute. TURN's position was similar to the position advanced by some of the IOUs.		Verified

C. Additional Comments on Part II :

#	Claimant	CPUC	Comment
1	Contribution to Decision-making	Verified	The Commission has granted compensation where a parties' participation contributed to the decision-making process even if specific recommendations were not adopted, and where a parties' showing assisted the Commission in its analysis of an issue. E.g. D.98-11-014, p. 8 ("TURN contributed to D.97-08-055 by raising this issue and developing the record on the implications of this conflict."); D.00-07-015 (the Commission found that an intervenor had made a substantial contribution even where a settlement was adopted over the intervenor's objection, because its participation "contributed to the . . . development of the record" and enhanced the Commission's understanding of the underlying issues); D.02-07-030 (the Commission based its finding of substantial contribution

¹ The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013), which was approved by the Governor on September 28, 2013.

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			<p>largely on the efforts intervenors made to develop the record, even where the adopted decision did not rely on that record). The Commission has provided compensation even when the position advanced by the intervenor is rejected. (D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4).</p> <p>In this case, the Commission’s legal analysis concerning the statutory interpretation of the phrase “aggregate customer peak demand” was modified in response to TURN’s comments, as exemplified by the changes from the proposed decision to the final decision.</p> <p>Also, although the Commission disagreed with TURN’s definition of peak load, the Commission instead adopted a temporary suspension of the NEM program to address the underlying concerns about cost effectiveness and cost shifting.</p>
2	Contribution to Proceedings with No Final Decision on the Merits	Verified	<p>The Commission dismissed the various Applications for Rehearing, including TURN’s, as moot and vacated the underlying Decision 12-05-036, because intervening legislation (AB 327) addressed the two main issues raised in the applications for rehearing. In such a situation, where a proceeding is terminated due to unforeseen circumstances, it is appropriate to fully compensate TURN for its participation. It is relevant that AB 327, which rendered the applications moot, resolved the underlying issues by clarifying the definition of “aggregate customer peak demand” and at the same time imposing a termination date on the existing Net Energy Metering program, thus validating the underlying principle advanced by TURN – that the Legislature was concerned about limiting the cost shift due to net energy metering.</p> <p>The Commission has substantial discretion in determining whether an intervenor’s “presentation has substantially assisted the commission in the making of its order or decision.” Section 1802(i). In exercising that discretion, the Commission should be guided by the stated legislative intent that the provisions of the intervenor compensation article “be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” Section 1801.3(b).</p> <p>The Commission has on multiple occasions found that a substantial contribution warrants the award of intervenor compensation even though no final decision on the merits is issued due to intervening events. See, for example, D.07-07-031 (Awarding full compensation even though ABx6 mooted underlying application, because “if we prohibit compensation where the proceeding might go away for reasons unrelated to the intervenors' actions, we might discourage participation in some of our most important proceedings.”) D.07-07-031 provides citations to several other decisions that provided intervenor compensation even though the underlying proceeding was terminated or dismissed for various reasons.</p>

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		<p>See, D.07-07-031, p. 7-9. See also, D.06-10-007, p. 8-9 (Awarding compensation despite no final decision based on Commission policy that “the risk of unanticipated dismissal should not be assigned to intervenors because doing so would make intervenors reluctant to participate in Commission proceedings.”); D.05-012-038 (Intervenor compensation appropriate even though no final decision issued due to passage of time.); D.04-03-031 (Granting intervenor compensation even though application rendered moot by legislation.); D.02-08-061, p. 6-7 (“Denying TURN any compensation in this proceeding simply because circumstances beyond its control led to dismissal of the application would be both unfair and inconsistent with the intent of the intervenor compensation statutes.”);</p> <p>The Commission has on several occasions considered four factors in determining whether to award compensation, including 1) the circumstances that resulted in termination, 2) the appropriateness of the intervenor’s participation, 3) the reasonableness of intervenor’s action in light of uncertainty, and 4) the intervenor’s past record of substantial contribution to the underlying issues. See, for example, D.05-12-038, p. 7-10; D.06-10-007, p. 9-10.</p> <p>Without getting into extreme detail, TURN suggests that application of these criteria supports an award of compensation in this proceeding. TURN appropriately participated in this proceeding on an issue of great economic and policy interest to residential customers; TURN had no indication at the time of its participation that the issue would be mooted by legislation; and TURN had long been active in promoting rules and policies concerning net energy metering and the California Solar Initiative, both in this docket as well as in other proceedings.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>a. How the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation</p> <p>This proceeding involved policy issues concerning the amount of customer load eligible to participate under the Net Energy Metering tariff. While it is difficult to quantify an exact benefit of TURN’s participation, the Commission’s Net Energy Metering cost effectiveness report (E3 Report, Oct. 2013) shows that the range of cost shifting due to NEM load ranges from about \$79 million under 2012 participation to over \$370 million under full NEM subscription. Thus, the amount of NEM eligible load has a direct financial impact on all ratepayers.</p>	<p>CPUC Verified</p> <p>Verified</p>
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It is important to note that AB 327 balanced competing interests by defining peak load as non-coincident peak, but imposing a termination date of June 30, 2017 on the existing NEM program.	
<p>b. Reasonableness of Hours Claimed.</p> <p>TURN seeks compensation for less than 27 hours of attorney time. This amount is reasonable given that analysis of the legal issue at stake required considerable research into legislative history and statutory interpretation of statutes passed in 1995 and 1998.</p>	Verified
<p>c. Allocation of Hours by Issue</p> <p>TURN's participation in this phase was limited to only one issue – the proper definition of “aggregate customer peak demand” in former §2827(c)(1). TURN submitted two pleadings both addressing the legal issues concerning this definition.</p>	Verified

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY, EXPERT AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Marcel Hawiger	2012	26.25	375	D.13-08-022, p. 33	\$9,843.75	2012	26.25	\$375	\$9,843.75
Thomas Long	2012	.5	530	Requested in A.10-07-017	265.00	2012	0.5	\$530	\$265.00
Subtotal:					\$10,108.75	Subtotal:			\$10,108.75
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hrs	Rate \$	Total \$
Marcel Hawiger	2014	4.75	\$175 ²	D.13-08-022, p. 33	\$890.63	2014	4.75	\$187.50	\$890.63
Subtotal:					\$890.63	Subtotal:			\$890.63

² The listed rate of \$175 is a typographical error from claimant. Half of Hawiger's hourly rate is \$187.50 and is used to calculate the compensation for preparing TURN's intervenor compensation claim.

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COSTS					
#	Item	Detail	Amount	Amount	
	Copies		\$22.00		\$22.00
	Postage		\$5.60		\$5.60
Subtotal:			\$27.60	Subtotal:	\$27.60
TOTAL REQUEST \$:			\$11,026.98	TOTAL AWARD \$:	\$11,026.98

* We remind all intervenors that Commission staff may audit its 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.

Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Marcel Hawiger	January 23, 1998	194244	No
Thomas Long	December 11, 1986	124776	No

c. CPUC Disallowances, Adjustments, and Comments:

#	Reason
2012 Hourly Rate for Thomas Long	TURN seeks an hourly rate of \$530 for Thomas Long’s work in 2012. The Commission adopted a 2012 hourly rate for Long in D.14-03-015 of \$530. We apply this 2012 hourly rate for Long’s work on D.12-05-036 and D.13-11-026.

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

³ This information may be obtained at: <http://www.calbar.ca.gov/>.

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.) 12-05-036 and D.13-11-026.
2. The claimed fees and costs are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$11,026.98.

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 \$11,026.98.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall pay The Utility Reform Network their respective shares of the award, based on their California-jurisdictional gas and electric revenues for the 2013 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 March 29, 2014, the 75th 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 proceeding is closed.
5. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1205036 and D1311026	
Proceeding(s):	R1005004	
Author:	ALJ Katherine MacDonald	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network	01/13/2014	\$11,026.98	\$11,026.98	No	None

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	\$375	2012	\$375
Thomas	Long	Attorney	The Utility Reform Network	\$530	2012	\$530

(END OF APPENDIX)