

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Amended Purchase and Sale Agreement between Pacific Gas and Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms.

Application 12-03-026
(Filed March 30, 2012)

**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM
NETWORK FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 12-12-035 AND DECISION 13-04-032**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 12-12-035 and D.13-04-032
Claimed: \$150,394.64	Awarded: \$137,328.76 (~8.7% reduction)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Hallie Yacknin

PART I: PROCEDURAL ISSUES

- A. Brief Description of Decision:** D.12-12-035 approved Pacific Gas and Electric Company's (PG&E) application for approval of a purchase and sale agreement (PSA) between PG&E and Contra Costa Generating Station, LLC. D.13-04-032 modified and denied rehearing of D.12-12-035. The California Court of Appeal annulled D.12-12-035, as modified by D.13-04-032.

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

Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):
<p>TURN timely filed its original NOI on May 23, 2012, which is within 30 days of the May 2, 2012, date of prehearing conference.</p> <p>TURN timely filed a supplemental NOI to claim costs of judicial review on June 3, 2013, which is within 30 days of the filing of May 20, 2013, the date of filing its petition for review with the Court of Appeal.</p>
Showing of customer or customer-related status (§ 1802(b)), and Showing of “significant financial hardship” (§ 1802(g)):
<p>D.13-09-041 found TURN eligible for intervenor compensation in this proceeding. Pursuant to Rule 17.2, TURN remains eligible in later phases of this proceeding, including rehearing, under this finding.</p>
Timely request for compensation (§ 1804(c)):
<p>TURN timely filed this request for compensation on March 18, 2014, which is within 60 days of February 5, 2014, the date that the Court of Appeal issued its opinion annulling D.12-12-035, as modified by D.13-04-032.</p>

PART II: SUBSTANTIAL CONTRIBUTION

A. Was there a substantial contribution to the ultimate resolution of the proceeding (see § 1802(i), § 1803(a) & D.98-04-059):

Contribution
<p>1. TURN argued in its petition and reply to the CPUC’s answer, and the Court concluded, that there was not substantial evidence to support the CPUC’s finding of need for the PSA. TURN’s contribution was substantial with respect to this issue.</p>
<p>2. TURN argued in its petition and reply to the CPUC’s answer that the CPUC failed to proceed in the manner required by law by relying on hearsay evidence for the truth of the matter in contravention of the administrative law judge’s ruling. The Court did not reach this issue because it found there was not substantial evidence to support the CPUC’s finding of need for the PSA. However, TURN’s presentation on this issue was a reasonable and necessary adjunct to its presentation on whether there was substantial evidence to support the CPUC’s finding of need. TURN’s contribution was substantial with respect to this issue.</p>
<p>3. TURN argued in its petition and reply to the CPUC’s answer that the CPUC failed to proceed in the manner required by law when it determined that the requirements for UOG procurement announced in D. 12-04-046 did not apply to PG&E’s application in this proceeding. The Court rejected TURN’s position on the merits and also questioned whether TURN’s argument was</p>

properly before the Court for not having been raised in its application for rehearing. TURN did not make a substantial contribution with respect to this issue.

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

TURN jointly applied for rehearing of D.12-12-035 with Western Power Trading Forum (WPTF), and the Independent Energy Producers Association (IEP), Communities for a Better Environment, and Californians for Renewable Energy, Inc. filed concurrent applications for rehearing.

IEP and WPTF jointly petitioned for judicial review in a different Court of Appeal than TURN; that matter was ultimately transferred to the same Court of Appeal and consolidated with TURN's petition for review.

TURN's request for compensation describes and reflects reasonable efforts to avoid unnecessary duplication with other parties.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Relationship between cost of participation and benefits realized through participation:

The annulment of D.12-12-035, as modified by D.13-04-032, saved ratepayers approximately \$200 million in annual revenue requirement for the project. TURN's claimed cost of participation (\$150,394.64), as adjusted by this decision, reasonably relates to this benefit.

b. Reasonableness of Hours Claimed.

The hours claimed reasonably reflect the undertaking with respect to the issues upon which TURN substantially contributed. However, TURN did not substantially contribute to the issue of whether the CPUC failed to proceed in the manner required by law when it determined that the requirements for UOG procurement announced in D. 12-04-046 did not apply to PG&E's application in this proceeding, and we disallow the costs associated with TURN's participation in that regard.

c. Allocation of Hours by Issue

TURN allocates its hours as follows:

- Consideration of hearsay evidence – 50%
- Reliance on hearsay evidence – 40%
- Standard for UOG procurement – 10%

This allocation reasonably reflects TURN's presentations and participation in the application for rehearing and judicial review. As discussed above, we disallow 10% of its claimed hours associated with TURN's costs of participation on the issue of standard for UOG procurement.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Finkelstein	2012	58.5	\$480	D.13-08-022	\$28,080	58.5	\$480	\$28,080.00
Robert Finkelstein	2013	199	\$490	2% increase to 2012 consistent with Res. ALJ-287	\$97,510	199	\$490 (See D.14-05-015)	\$97,510.00
Robert Finkelstein	2014	2	\$490	Same rate as 2013 for purposes here	\$980	2	\$490	\$980.00
Thomas Long	2013	4	\$555	2% increase to 2012 consistent with Res. ALJ-287, subject to cap of rate range	\$2,220	4	[1] \$555	\$2,220.00
Marcel Hawiger	2013	1.25	\$400	2% increase to 2012, plus 5% "step" Increase Consistent with Res. ALJ-287	\$500	1.25	\$385.00 (See D.13-10-037)	\$481.25
Kevin Woodruff	2012	3.75	\$240	D.12-11-050 (for work in 2011 and 2012)	\$900	3.75	\$240	\$900.00
Kevin Woodruff	2013	1.25	\$240	D.12-11-050 (for work in 2011 and 2012)	\$300	1.25	\$240	\$300.00
Subtotal:\$130,490						Original Subtotal: \$130,471.25		
						10% reduction: \$ -13,047.13		
						Subtotal: \$117,424.12		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Finkelstein	2013	0.75	\$245	Half of requested hourly rate for 2013	\$183.75	.75	\$245	\$183.75

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Robert Finkelstein	2014	10.25	\$245	Half of requested hourly rate for 2013	\$2,511.25	10.25	\$245	\$2,511.25
Subtotal:\$2,695						Subtotal:\$2,695.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Copies	Printing and binding for Court of Appeals pleadings			\$636.42	\$636.42		
	Copies and Postage	TURN copies and postage for CPUC pleadings			\$36.74	\$36.74		
	Filing fee	Court of Appeals filing fee for TURN petition			\$775	\$775.00		
	Computerized Research	Charge for access to computerized database for research associated with TURN petition			\$664.48	\$664.48		
Subtotal:					\$2,112.64	Subtotal:	\$2,112.64	
TOTAL REQUEST (without multiplier):						\$135,297.64	\$122,231.76	
Requested 20% Multiplier on judicial review work:						\$15,097	\$15,097.00	
TOTAL REQUESTED:						\$150,394.64	TOTAL AWARD: \$137,328.76	
<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> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>								

Attorney	Date Admitted to CA BAR¹	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Robert Finkelstein	June 1990	146391	No
Thomas Long	December 1986	124776	No
Marcel Hawiger	January 1998	194244	No

C. Disallowances and Adjustments:

Item	Reason
[1]	The Commission approved a 2013 rate for Thomas Long of \$555.00 in D.14-06-027.

D. Request for 20% Multiplier:

TURN seeks a 20% multiplier, and cites to (1) D.13-011-022 in which the CPUC awarded a 33% “fee enhancement” multiplier to reflect the degree of TURN’s success on critical legal issues of due process and procedure, large savings to ratepayers, and the contingent nature of judicial review work, and (2) D.10-11-032 in which the CPUC awarded a 25% enhancement to reflect TURN’s efficiency, high degree of success, and resulting large savings to ratepayers. TURN submits that the same circumstances are present here, but requests a lower “fee enhancement” to reflect that TURN was not the only intervenor seeking judicial review and because the Court of Appeal (1) did not reach the second procedural issue and (2) rejected TURN’s argument regarding the UOG standard.

As a matter of policy, the CPUC exercises restraint in enhancing hourly rates, and grants enhancements only in exceptional cases. (See D.95-04-049, as modified by D.07-03-012.) Although here, as in the proceeding underlying D.13-11-022, TURN has achieved great savings to ratepayers and prevailed on critical legal issues, CPUC proceedings typically involve issues affecting large costs (or savings, if such costs are averted) to ratepayers. Furthermore, given the limited scope of judicial review of CPUC decisions, such review typically concerns critical legal issues of due process and procedure, and such issues, while critical, are not necessarily complex. Finally, while we recognize that an intervenor’s ability to obtain an award of compensation for judicial review effort depends on the success of that judicial review effort (in contrast with participation in proceedings before the CPUC, where an intervenor may be found to have made a substantial contribution to a CPUC decision even if it did not prevail), we do not adopt a blanket policy of awarding fee enhancements for judicial review work.

However, in this limited instance and because of the similar circumstances in this proceeding and in the proceeding underlying D.13-11-022, we will apply a 20% multiplier in this decision.,

¹ This information may be obtained at: <http://www.calbar.ca.gov/>.

PART IV: OPPOSITIONS AND COMMENTS

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

FINDINGS OF FACT

1. The Utility Reform Network has made a substantial contribution to D. 12-12-035 and D.13-04-032.
2. The requested hourly rates for The Utility Reform Network'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. The total of reasonable compensation is \$137,328.76.

CONCLUSION OF LAW

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 \$137,328.76.
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 compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning June 01, 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 decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1212035 and D1304032		
Proceeding(s):	A1203026		
Author:	ALJ Yacknin		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	02/25/2013	\$150,394.64	\$137,328.76	Yes	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	\$480	2012	\$280
Robert	Finkelstein	Attorney	The Utility Reform Network	\$490	2013	\$490
Robert	Finkelstein	Attorney	The Utility Reform Network	\$490	2014	\$490
Thomas	Long	Attorney	The Utility Reform Network	\$555	2013	\$555
Marcel	Hawiger	Attorney	The Utility Reform Network	\$400	2013	\$385
Kevin	Woodruff	Expert	The Utility Reform Network	\$240	2012	\$240
Kevin	Woodruff	Expert	The Utility Reform Network	\$240	2013	\$240

(END OF APPENDIX)