

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for the Recovery of Costs Associated with the Acquisition and Transfer of the Assets of the Hercules Municipal Utility (U39E).

Application 13-07-001
(Filed on July 1, 2013)

**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM
NETWORK FOR SUBSTANTIAL CONTRIBUTION TO
DECISIONS 14-01-009 AND 14-08-012**

Intervenor: The Utility Reform Network (TURN)	For contribution to Decision (D.) 14-01-009 and D.14-08-012
Claimed: \$33,711.23	Awarded: \$34,057.93
Assigned Commissioner: Carla J. Peterman	Assigned ALJ's: Colette E. Kersten and Seaneen M. Wilson

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	The Commission bifurcated PG&E's application and issued two decisions in this proceeding. In D.14-01-009 (the Phase 1 decision), the Commission approved PG&E's acquisition of the assets of the Hercules Municipal Utility District, rejected the "benefit sharing" proposed in the utility's application, and deferred to Phase 2 resolution of the other cost recovery issues. In D.14-08-012 (the Phase 2 decision), the Commission adopted without modification the proposed settlement sponsored by PG&E and TURN to resolve those cost recovery issues.
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B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	8/29/13	Verified
2. Other specified date for NOI:		

3. Date NOI filed:	9/19/13	Verified
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:	A.12-11-009/I.13-03-007 (PG&E 2014 GRC)	Verified
6. Date of ALJ ruling:	9/6/13	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.12-11-009/I.13-03-007 (PG&E 2014 GRC)	Verified
10. Date of ALJ ruling:	9/6/13	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-08-007	D.14-08-012
14. Date of issuance of Final Order or Decision:	8/18/14	Verified
15. File date of compensation request:	09/10/14	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I (use line reference # as appropriate):

#	Intervenor’s Comment(s)	CPUC Discussion
Line 9-12		In its NOI filed in A.12-11-009/I.13-03-007, TURN made its annual showing (for 2013) of significant financial hardship which was approved by a 9/6/13 ALJ ruling.

PART II: SUBSTANTIAL CONTRIBUTION

A. Description of Claimant’s contribution to the final decision (see § 1802(i), § 1803(a), and D.98-04-059).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>1. Bifurcation of Acquisition and Benefits Sharing Issues from Cost Forecasting Issues:</p> <p>TURN's protest and participation in the prehearing conference supported a bifurcation of the proceeding so that PG&E's acquisition of the Hercules assets could go forward as expeditiously as possible, with a second phase devoted to more fully exploring PG&E's claims underlying its cost forecasts and, if necessary, the interplay of those forecasts with the proposed "net benefits" calculations and sharing proposals.</p> <p>The Assigned Commissioner and ALJ issued a Scoping Memo that adopted such bifurcation, deferring to a second phase the review of PG&E's forecasts for capital expenditures other than for the acquisition of the Hercules assets.</p>	<p>TURN Protest, pp. 1 and 4.</p> <p>PHC Transcript, pp. 47-50, 60-61, and 64-65.</p> <p>Scoping Memo of 9/16/13, pp. 2-3, and 5-6.</p>	Accepted
<p>2. Proposed Purchase Price:</p> <p>TURN, along with ORA, called for the Commission to distinguish between the proposed purchase price of \$9.5 million and the book value of \$7.4 million, with a finding that only the latter figure is reasonable.</p> <p>The Commission agreed with ORA and TURN that PG&E is only authorized to recover the \$7.4 million in book value of these assets, and that the "acquisition premium" above that value must be kept out of rates.</p>	<p>TURN Comments in Response to Scoping Memo, pp. 2 and 4.</p> <p>D.14-01-009, pp. 15-16; see also Finding of Fact 16.</p>	Accepted
<p>3. "Net Benefits" Sharing Proposal:</p> <p>TURN raised a number of arguments in opposition to PG&E's proposal for a 50/50 sharing of "net benefits" between PG&E ratepayers and shareholders. TURN pointed out that the decisions PG&E cited as support for its proposal involved utilities not regulated on a cost-of-service basis. TURN further argued that PG&E's assessment of "benefits" excluded the authorized rate of return the utility</p>	<p>TURN Comments in Response to Scoping Memo, pp. 4-12; TURN Reply Comments in Response to Scoping Memo, pp. 8-10.</p>	Accepted

<p>was likely to earn on its investment both for the Hercules acquisition and any reasonable associated capital expenditures. TURN also noted that the agreement between PG&E and Hercules was not premised on benefits sharing, as it was silent on the subject, and that to the extent the proposal was intended as a means for PG&E to recover its acquisition premium, it was contrary to traditional and well-founded treatment of other “below the line” costs.</p> <p>The Commission rejected PG&E’s benefits sharing proposal, agreeing with the arguments put forward by TURN and a number of other parties. The decision noted that the circumstances for this “merger” are different from those addressed in previous CPUC merger decisions. It also questioned the timing under PG&E’s proposal, since the utility would receive its share of the benefits up front while ratepayers would receive their share over time, and then only if the forecasted benefits actually materialized.</p>	<p>D.14-01-009, pp. 18-21, 24-26; Findings of Fact 18-19, 21-22; Conclusions of Law 7-8 and 10.</p>	
<p>4. Rejection of PG&E’s Arguments in PD Comments Suggesting Failure To Adopt Net Benefits Could Doom the Acquisition:</p> <p>The original Proposed Decision for the first phase would have approved the acquisition but rejected the net benefits sharing proposal. PG&E’s opening comments could be read to suggest that the utility might not consummate the deal absent approval of its net benefits sharing proposal. TURN and ORA filed joint reply comments that criticized the utility’s tactics, equating it to holding the Hercules Municipal Utility hostage while at the same time claiming Good Samaritan status.</p> <p>The Commission agreed with TURN and ORA, and criticized the utility’s tactics.</p>	<p>TURN/ORR Reply Comments on Proposed Decision, pp. 1-3.</p> <p>D.14-01-009, pp. 38-41.</p>	<p>Accepted</p>
<p>5. Phase 2 Settlement:</p> <p>The Commission assigned to Phase 2 the determination of the reasonableness of PG&E’s forecasted \$3.6 million of capital expenditures associated with costs other than the acquisition of Hercules Municipal Utility. In its Phase 1</p>	<p>D.14-01-009, pp. 44-45.</p>	<p>Accepted</p>

<p>decision, the Commission indicated “it is desirable to resolve Phase 2 issues ... as quickly as possible.”</p> <p>TURN and PG&E, the only parties active in Phase 2, were able to achieve a proposed settlement of Phase 2 issues in relatively short order. Rather than rely on forecasts based on assumptions TURN deemed questionable, the parties agreed to have rate recovery limited to the recorded capital expenditures during the 2014-16 period. Starting in 2017, the associated costs would be consolidated with PG&E’s base revenue requirements subject to its general rate case.</p> <p>In response to a request from the assigned ALJ, TURN worked with PG&E to develop further information comparing the proposed settlement outcomes with the parties’ litigation positions.</p> <p>The Commission adopted the proposed settlement without change.</p>	<p>Motion of PG&E and TURN for Approval and Adoption of Proposed Settlement (4/3/14).</p> <p>Response of PG&E and TURN to ALJ’s Ruling of May 30, 2014 (6/16/14).</p> <p>D.14-08-012.</p>	
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B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor’s Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes	Yes
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Yes
c. If so, provide name of other parties: City and County of San Francisco, Merced and Modesto Irrigation Districts.		Yes
d. Intervenor’s claim of non-duplication: In Phase 1, TURN was one of a number of parties, including the City and County of San Francisco, the Merced and Modesto Irrigation Districts, and the Office of Ratepayer Advocates, which opposed the PG&E proposal for “net benefits” sharing. TURN coordinated closely with those parties to ensure an effective presentation on this issue, including sharing strategies for phasing the proceeding in a manner that ensured the issue would receive appropriate attention without unduly jeopardizing the outcome for Hercules. When the Phase 1 PD issued, TURN submitted joint		Agreed

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

<p>reply comments with ORA. In Phase 2, TURN was the only active party other than PG&E.</p> <p>The Commission should find that TURN's participation was efficiently coordinated with the participation of other intervenors during the phase in which the intervenors had common positions, so as to avoid undue duplication and to ensure that any such duplication served to supplement, complement, or contribute to the showing of the other intervenors.</p>	
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness:	CPUC Discussion
<p>TURN’s request for intervenor compensation seeks an award of approximately \$35,000 as the reasonable cost of our participation in the proceeding. In light of the quality of TURN’s work, and the positive policy outcomes achieved for ratepayers in large part due to TURN’s participation in the proceeding, the Commission should have little trouble concluding that the amount requested is reasonable.</p> <p>PG&E’s application raised an important policy issue with its proposal for a “net benefits” sharing that would provide PG&E’s shareholders with up front recovery of 50% of a forecast of net benefits, while PG&E’s customers would bear the risk that the benefits would not accrue in the amount or on the schedule PG&E predicted. TURN played an active role in this proceeding not so much out of a concern for the implications that might directly result from the Hercules acquisition transaction, but because of the threat such a principle would create for larger future transactions. TURN submits that while the dollar amounts directly at issue in this proceeding were relatively small (less than \$15 million total), these policy implications warranted TURN’s active involvement.</p> <p>Furthermore, rejection of PG&E’s proposed net benefits sharing meant that approximately \$2.65 million (as forecast by PG&E) that would have gone to shareholders under the utility’s approach will instead remain with PG&E’s ratepayers, to the extent such benefits actually materialize going forward. TURN’s request for \$35,000 in compensation is less than 2% of the amount in dispute.</p> <p>In sum, the Commission should conclude that TURN’s overall request is reasonable in light of the importance of the policy issue and the benefits to PG&E ratepayers that were attributable to TURN’s participation in the case.</p>	<p>Verified</p>
<p>b. Reasonableness of hours claimed:</p> <p>The number of hours recorded by TURN’s attorneys and consultants for work on this proceeding is approximately 65 hours total, or the equivalent of 1.5-2 weeks of full-time work. As described below and as further reflected in the time records attached to this request, the number of hours for each TURN representative was reasonable under the circumstances present here.</p>	<p>Verified</p>

<p><u>TURN Attorneys and Consultant:</u></p> <p>Robert Finkelstein served as TURN’s sole representative throughout most of this proceeding. The 60 hours he recorded were predominantly devoted to Phase 1 (approximately 50 hours), which is consistent with the more hotly-contested issues addressed in that phase. Thomas Long devoted approximately 4 hours to reviewing PG&E’s application and preparing TURN’s protest. William Marcus of JBS Energy, Inc., played a very limited but important role in the proceeding, providing input at three times regarding TURN’s strategy in both Phase 1 and Phase 2.</p> <p>TURN submits that the Commission should find reasonable the number of hours for Mr. Finkelstein, Mr. Long and Mr. Marcus that are included in the request.</p> <p><u>Compensation Request Preparation Time:</u> TURN is requesting compensation for 5.5 hours devoted to compensation-related matters, primarily preparation of this request for compensation (5.0 hours). This is a very small number of hours for preparing a compensation request, particularly for a proceeding with more than a single phase. The Commission should find it a reasonable figure.</p> <p>Mr. Finkelstein prepared this request for compensation because of his extensive knowledge of all aspects of this proceeding, combined with his experience with major energy proceedings in general, would enable him to prepare the request in a more efficient manner than if it were prepared by one of the other attorneys. In addition, the request for compensation is due during a period when TURN’s attorney ranks are temporarily depleted, so assigning the preparation work to another attorney with a lower hourly rate was not an option.</p> <p>In sum, the Commission should find that the number of hours claimed is fully reasonable in light of the complexity of the issues and TURN’s relative success on the merits.</p>									
<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. Where relevant, TURN has generally indicated in the code whether the work was in the PSEP phase or the TCAP phase. The following codes relate to specific substantive issue and activity areas addressed by TURN.</p> <table border="1" data-bbox="232 1528 1201 1896"> <thead> <tr> <th>Code</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>GP</td> <td>General Participation -- work that was essential to effective participation in the case and that would not vary with the number of issues that TURN addresses, for the most part.</td> </tr> <tr> <td>BS</td> <td>PG&E’s “benefit sharing” proposal and related issues</td> </tr> <tr> <td>Costs</td> <td>PG&E’s forecast costs for capital expenditures other than the costs of acquiring the Hercules facilities</td> </tr> </tbody> </table>	Code	Description	GP	General Participation -- work that was essential to effective participation in the case and that would not vary with the number of issues that TURN addresses, for the most part.	BS	PG&E’s “benefit sharing” proposal and related issues	Costs	PG&E’s forecast costs for capital expenditures other than the costs of acquiring the Hercules facilities	<p>Verified</p>
Code	Description								
GP	General Participation -- work that was essential to effective participation in the case and that would not vary with the number of issues that TURN addresses, for the most part.								
BS	PG&E’s “benefit sharing” proposal and related issues								
Costs	PG&E’s forecast costs for capital expenditures other than the costs of acquiring the Hercules facilities								

PD	Review, analysis and comments on the Phase 1 Proposed Decision	
Ph2	Review, analysis, and settlement-related efforts for Phase 2 issues, including preparing response to ALJ request for further information on proposed settlement	
Comp	Time devoted to compensation-related pleadings	

TURN submits that under the circumstances this information should suffice to address the allocation requirement under the Commission’s rules. Should the Commission wish to see additional or different information on this point, TURN requests that the Commission so inform TURN and provide a reasonable opportunity for TURN to supplement this showing accordingly.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Robert Finkelstein	2013	39.75	\$490	D.14-05-015	\$19,477.50	39.75	\$490	\$19,477.50
R. Finkelstein	2014	20.5	\$490 ²	2013 Rate (See Comment 1)	\$10,045.00	20.5	\$505 ³	\$10,352.50
Thomas Long	2013	4.25	\$555	D.14-05-015	\$2,358.75	4.25	\$555	\$2,358.75
William Marcus	2013	0.75	\$265	D.14-05-015	\$198.75	0.75	\$265	\$198.75
W. Marcus	2014	0.34	\$265	2013 Rate (See Comment 1)	\$90.10	0.34	\$270 ⁴	\$91.80
Subtotal: \$32,170.10						Subtotal: \$32,479.30		
INTERVENOR COMPENSATION CLAIM PREPARATION **								

² In its application for intervenor compensation, TURN states it is not requesting here that the Commission establish an hourly rate at the stated levels for 2014 for any of its attorneys or expert witnesses. TURN states that at the time this request for compensation was submitted, the Commission had not yet determined the general “cost-of-living” adjustment for 2014. Therefore, TURN used the \$490 hourly rate for Mr. Finkelstein and \$265 rate for Mr. Marcus as placeholders for whatever rate results from application of any general adjustment the Commission may adopt for 2014 to the previously authorized rate for work each attorney or expert witness performed in 2013.

³ In determining Finkelstein’s 2014 hourly rate, we apply a 2.58 percent cost-of-living adjustment to Finkelstein’s 2013 hourly rate of \$490 pursuant to Resolution ALJ-303, for a 2014 hourly rate of \$505.

⁴ In determining Marcus’ 2014 hourly rate, we apply a 2.58 cost-of-living adjustment to Marcus’ 2013 hourly rate of \$265 pursuant to Resolution ALJ-303, for a 2014 hourly rate of \$270.

Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
R. Finkelstein	2013	0.5	\$245	½ of approved 2012 rate	\$122.50	0.5	\$245 ⁵	\$122.50
R. Finkelstein	2014	5.0	\$245	½ of approved 2013 rate	\$1,225.00	5.0	\$252.50 ⁶	\$1,262.50
Subtotal: \$1,347.50					Subtotal: \$1,385.00			
COSTS								
#	Item	Detail		Amount	Amount			
	Photocopying	Copies made of TURN pleadings for service		\$26.16	\$26.16			
	Postage	Expenses for postage for this proceeding		\$16.88	\$16.88			
	Lexis/Nexis	Computerized research costs associated with preparation of TURN's strategy and pleadings for this proceeding		\$150.59	\$150.59			
Subtotal: \$193.63					Subtotal: \$193.63			
TOTAL REQUEST: \$33,711.23					TOTAL AWARD: \$ 34,057.93			
<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. Intervenor'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 INFORMATION								
Attorney		Date Admitted to CA BAR ⁷		Member Number		Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation		
Thomas Long		December 11, 1986		124776		No		
Robert Finkelstein		June 13, 1990		146391		No		

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
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⁵ The basis for this hourly rate is ½ of Finkelstein's approved hourly rate in D.14-05-015.

⁶ See footnote 3 above.

⁷ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes
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FINDINGS OF FACT

1. TURN has made a substantial contribution to Decisions (D.) 14-01-009 and D.14-08-012.
2. The requested hourly rates for TURN'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 \$34,057.93.

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 \$34,057.93.
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 November 24, 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.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1401009 and 1408012	
Proceeding(s):	A1307001	
Author:	ALJ Kersten and ALJ Wilson	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network (TURN)	9/10/2014	\$33,711.23	\$34,057.93	n/a	Increase in requested 2014 hourly rate for cost-of-living adjustment

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	TURN	\$490	2013	\$490
Robert	Finkelstein	Attorney	TURN	\$490	2014	\$505
Thomas	Long	Attorney	TURN	\$555	2013	\$555
William	Marcus	Expert	TURN	\$265	2013	\$265
William	Marcus	Expert	TURN	\$265	2014	\$270

(END OF APPENDIX)