

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) for Authority To Revise Their Rates Effective January 1, 2013, in Their Triennial Cost Allocation Proceeding.	Application 11-11-002 (Filed on November 1, 2011)
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**DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY
REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION
TO DECISION 16-05-024**

Intervenor: The Utility Reform Network	For contribution to Decision (D.) 16-05-024
Claimed: \$ 17,340.00	Awarded: \$17,340.00
Assigned Commissioner: Michel P. Florio	Assigned ALJ: Maribeth A. Bushey

PART I: PROCEDURAL ISSUES (to be completed by Intervenor except where indicated)

A. Brief description of Decision:	In D.16-05-024, the Commission denied the application for rehearing of D.15-12-020 filed by Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) ¹ , finding no demonstration of legal error. In D.15-12-020, the Commission had adopted the position recommended by The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) regarding rate recovery issues associated with PSEP costs for pipelines installed during the 1956-1961 period for which pressure test records could not be located. The Commission's rehearing decision upheld assignment of the costs of pressure testing pipelines installed during that period to shareholders rather than ratepayers.
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¹ SoCalGas and SDG&E are referred to collectively as "the Sempra Utilities."

B. Intervenor 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):	1/30/12	Verified.
2. Other specified date for NOI:		
3. Date NOI filed:	2/27/12	Verified.
4. Was the NOI timely filed?		Yes, The Utility Reform Network timely filed the notice of intent (NOI) to claim intervenor compensation.
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, TURN demonstrated appropriate status.
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), as cited in NOI here	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, TURN demonstrated significant financial hardship.

Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.16-05-024	Verified.
14. Date of issuance of Final Order or Decision:	5/17/16	5/16/2016
15. File date of compensation request:	5/23/16	Verified.
16. Was the request for compensation timely?		Yes, TURN timely filed the request for intervenor compensation.

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

#	Intervenor's Comment(s)	CPUC Discussion
	This request for compensation covers work in a later phase of the A.11-07-008 proceeding. TURN was found eligible for an award of compensation in the earlier phase in the compensation award in D.14-10-017. Pursuant to Rule 17.2 of the Commission's Rules of Practice and Procedure, TURN remains eligible for intervenor compensation in later phases of the proceeding.	Verified. The Commission agrees that TURN remains eligible for compensation.
	TURN's showing on financial hardship (relying on the rebuttable presumption) and customer status was contained in the NOI submitted during the earlier phase of this proceeding. In D.14-10-017 (at page 2), the Commission found TURN to have satisfied the customer status and "significant financial hardship" elements. On October 15, 2015, TURN's Board of Directors adopted amendments to TURN's bylaws and articles of incorporation. The amended version of TURN's by-laws and articles of incorporation were submitted on January 6, 2016 in A.15-09-001 (PG&E 2017 GRC). The by-laws and articles of incorporation have not changed since their submission in that proceeding.	Verified.
	TURN had originally included in an earlier-filed request for compensation in this proceeding 32.5 hours associated with the work on the response to the SoCalGas and SDG&E application for rehearing of D.15-12-020. The Commission found that work not ripe for review, and denied without prejudice the earlier claim insofar as it covered the work on rehearing of D.15-12-020. (D.16-05-021, pp. 5-6, 9	Verified.

and 11.)	
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PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(i), § 1803(a), and D.98-04-059). (For each contribution, support with specific reference to the record.)

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>1. Record Evidence Supporting The Findings: The Sempra Utilities challenged the sufficiency of the record evidence to support the Commission’s findings regarding the pipeline testing practices in 1956-1961 and the rate recovery of associated costs.</p> <p>Regarding testing practices, TURN argued that the utilities had failed again to present a reasonable explanation of why they have test records for some but not all of the pipelines installed in 1956-1961. TURN also argued that if the utilities had legitimate concerns about the accuracy or veracity of their own statements contained in the data request response the Commission relied upon in part to support its finding, the utility could have presented such concerns in rebuttal testimony.</p> <p>The Commission cited the absence of any offered rationale or evidence from the utilities that might show why different practices or protocols would have been used for different pipelines during the same period. The Commission also noted the utilities’ failure to offer any testimony or other evidence concerning past testing practices.</p> <p>Regarding cost recovery of past testing costs, TURN challenged the utilities’ arguments that the absence of direct evidence meant any finding was effectively speculation, and that any inferences without direct evidence would constitute conjecture. TURN also addressed the specific evidence supporting the Commission’s findings on cost recovery issues, including the utilities’ arguments based on decisions from the</p>	<p>TURN Response to Application for Rehearing of D.15-12-020 (“TURN Response”), §§ VI.B. (pp. 16-19) and IV (pp. 5-6).</p> <p>D.16-05-024, p. 5.</p> <p>TURN Response, Section IV (pp. 5-7) and Section VI (p. 12-13 and 13-16).</p> <p>D.16-05-024, pp. 7 and 9.</p>	<p>Verified.</p>

<p>1950s and 1960s.</p> <p>The Commission reaffirmed that a decisions findings could be based on inference so long as the inference is based on more than pure speculation or thin air. It also concluded that the various past GRC decisions offer no guidance, as they did not specifically address whether pressure test costs were requested, granted or denied.</p>		
<p>2. Burden of Proof: The Sempra Utilities argued that the burden of proof should have been on TURN and ORA, since they were challenging the earlier decision and the Commission erred by assigning the burden to the utilities.</p> <p>TURN argued that the Commission had long recognized that the ultimate burden of proof of reasonableness never shifts from the utility, and TURN and ORA had met the burden of production to the extent it appropriate fell upon them. TURN also urged the Commission to see past the baseless claims of “volumes of evidence” when the Sempra Utilities had failed to cite to any specific record evidence in support of their claims. TURN also argued that the attempt to revive by footnote their earlier “penalty” arguments should be deemed untimely, as the arguments had been rejected in D.14-06-007.</p> <p>The Commission reaffirmed the longstanding principle that the ultimate burden of proof never completely shifts from the utilities and, as here, once other parties had met their burden of going forward, the burden shifts back to the utilities. The utilities chose not to present any further testimony, but instead to rely on unspecified citations to “volumes of evidence.” The Commission also rejected the attempt to revive the penalty arguments, finding the challenge untimely.</p>	<p>TURN Response, §§V.A. (pp. 7-10) and IX (p. 23).</p> <p>D.16-05-024, pp. 10-11, and fn. 27.</p>	<p>Verified.</p>
<p>3. Due Process: The Sempra Utilities argued that the Commission had violated their due</p>		<p>Verified.</p>

<p>process arguments by effectively applying G.O. 112 retroactively and without notice to the utilities they might be held to the higher standards under that order.</p> <p>TURN argued that there was no due process violation. The 1956-1961 pipelines were always a distinct category from the pre-1956 and post-1961 categories, and the record evidence supported the finding that PSEP-related costs for those pipelines should not be recovered from ratepayers. Furthermore, the utilities were provided ample notice of the opportunity to submit additional testimony to demonstrate the reasonableness of their proposed cost recovery, and voluntarily opted not to take advantage of such opportunity.</p> <p>The Commission found that it had not applied G.O. 112, in part because it did not change the 1956-61 or other time periods under consideration. The Commission also noted that the utilities had fair notice that they should be prepared to present further evidence to support the requested rate recovery, and were included in the rulings creating the opportunities to submit such evidence.</p>	<p>TURN Response, §§ VII (pp. 20-21) V.C. (pp. 11-12) and II (pp. 2-4).</p> <p>D.16-05-024, pp. 12-13.</p>	
<p>4. Abuse of Discretion: The Sempra Utilities argued that it was an abuse of discretion for the Commission to assign cost responsibility to shareholders when an earlier decision had merely said it “may” have been inappropriate to assign the costs in question to ratepayers.</p> <p>TURN argued that the focus on “may” versus “shall” is beside the point, as the questions should be decided based on the evidentiary record. And given the evidentiary record developed on rehearing, the only reasonable outcome was to assign cost responsibility to shareholders.</p> <p>The Commission found there was no purpose to debate the use of “may” versus “shall,” as the issue was whether the evidence supported assigning costs to ratepayers or shareholders.</p>	<p>TURN Response, §VII (pp. 21-23).</p> <p>D.16-05-024, p. 14.</p>	<p>Verified.</p>

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?²	Yes	Verified.
b. Were there other parties to the proceeding with positions similar to yours?	No	Agreed.
c. If so, provide name of other parties:		
<p>d. Intervenor’s claim of non-duplication: TURN coordinated as practicable with ORA, continuing our practice throughout the proceeding and particularly the rehearing portions thereof. The relatively short response period (fifteen days) and other workload pressures rendered such coordination more difficult, and prevented TURN and ORA from being able to submit a single response to the SoCalGas and SDG&E application for rehearing. Still, TURN and ORA coordinated their responses to the application for rehearing by, for example, discussing potential response strategies and sharing drafts as available. As a result, TURN’s and ORA’s responses achieved greater coverage of the multitude of arguments presented in the utilities’ application for rehearing, while minimizing the risk of overlap.</p> <p>The Commission should find that under the circumstances TURN's participation was efficiently coordinated with the participation of ORA wherever possible, 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 intervenor. And consistent with such a finding, the Commission should determine that all of TURN’s work is compensable consistent with the conditions set forth in Section 1802.5.</p>		Agreed.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness:	CPUC Discussion
TURN’s request for intervenor compensation seeks an award of approximately \$17,500 as the reasonable cost of our participation in the last round of rehearing in this proceeding. In light of the scope and quality of TURN’s work, and the benefits achieved through TURN’s participation in the proceeding, the Commission should have little trouble concluding that the amount requested is reasonable.	Verified.

² 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>The rehearing decision upheld the appropriateness of assigning to shareholders, rather than ratepayers, the costs of certain PSEP-related work. In their compliance filing made February 1, 2016, the Sempra Utilities identified reductions of \$4.3 million to the SoCalGas Safety Enhancement Expense Balancing Account (SEEBA), and \$136,000 (combined) to the SoCalGas and SDG&E Safety Enhancement Capital Cost Balancing Accounts. These figures reflect the costs recorded to date in those balancing accounts; the utilities will likely continue recording costs associated with 1955-1961 pipelines. The requested compensation amount is a very small fraction of the savings directly attributable to TURN’s work.</p> <p>In sum, the Commission should conclude that TURN’s overall request is reasonable in light of the substantial benefits to Sempra Utility ratepayers that were attributable to TURN’s participation in the case.</p>	
<p>b. Reasonableness of hours claimed: TURN’s attorney recorded a very reasonable number of hours for his work on the response to the utilities’ application for rehearing. Mr. Finkelstein had earlier assumed the lead role for purposes of preparing the application for rehearing of D.14-12-021, and continued in that role through the preparation of testimony and briefs in response to D.15-03-049, and opening comments on the Proposed Decision that became D.15-12-020. The SoCalGas and SDG&E application for rehearing raised a variety of challenges to D.15-12-020, and cited an array of Commission decisions from nearly 50 years ago. The hours requested for TURN’s preparation of a response reflects the equivalent of a week of a single attorney’s time. The Commission should find the requested number of hours reasonable here.</p> <p><u>Compensation Request Preparation Time:</u> TURN is requesting compensation for 3.0 hours devoted to compensation-related matters, all related to preparation of this request for compensation. Mr. Finkelstein prepared this request for compensation because his extensive knowledge of the underlying issues and procedural course enabled him to prepare the request in a more efficient manner than if it were prepared by one of the other attorneys.</p> <p>TURN submits that the recorded hours are reasonable. Therefore, TURN seeks compensation for all of the hours recorded by our attorney and included in this request.</p>	<p>Verified.</p>
<p>c. Allocation of hours by issue:</p> <p>TURN typically allocates its daily time entries by activity codes based on 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 code – Treatment of 1956-1961 Pipeline Costs. In the</p>	<p>Verified.</p>

request for compensation that resulted in D.16-05-021, TURN instead allocated the work based primarily on the pleading or testimony, with entries designated by the initial rehearing request (App Rhg), the request for rehearing of the first decision on rehearing (Rhg on Rhg), and so on. The Commission implicitly deemed this approach reasonable under the circumstances. D.16-05-021, p. 8. Consistent with that approach, TURN submits that all of the work on the rehearing response was associated with the single issue area of Treatment of 1956-1961 Pipeline Costs. Therefore TURN has not sought to present a further allocation of hours. 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.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Robert Finkelstein	2016	32.5	\$510	Res. ALJ-329	\$16,575.00	32.50	510.00	16,575.00
Subtotal: \$ 16,575.00						Subtotal: \$ 16,575.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
R. Finkelstein	2016	3	\$255.00	½ of requested 2016 rate	\$765.00	3	255.00	765.00
Subtotal: \$765.00						Subtotal: \$765.00		
COSTS								
#	Item	Detail			Amount	Amount		
		See Comment 2, below.				\$00.00		
Subtotal: \$0.00						Subtotal: \$0.00		
TOTAL REQUEST: \$ 17,340.00						TOTAL AWARD: \$17,340.00		
<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>								

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

ATTORNEY INFORMATION

Attorney	Date Admitted to CA BAR³	Member Number	Actions Affecting Eligibility?
Robert Finkelstein	June 13 1990	146391	No

C. Intervenor's Comment(s):

Comment #	TURN's Comments
Comment 1	<p>2016 Hourly Rates for TURN Attorney</p> <p>For 2016 hours, TURN is requesting compensation using the rates authorized for 2014, escalated by 0% for 2015 and 1.28% for 2016. This approach is generally consistent with the cost of living adjustments adopted in Resolutions ALJ-308 and ALJ-329 for intervenor compensation purposes.</p>
Comment 2	<p>Expenses – TURN's earlier request for compensation had included expenses associated with computerized legal research charges, including \$118.53 incurred in early 2016 for work on the response to the application for rehearing. The resulting award of compensation included those expenses. D.16-05-021, p. 10. TURN is not seeking further recovery of expenses associated with preparing the response to the application for rehearing.</p>

D. CPUC Disallowances and Adjustments:

Item	Reason

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.

FINDINGS OF FACT

- The Utility Reform Network has made a substantial contribution to D.16-05-024.

³ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch> .

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 total of reasonable compensation is \$17,340.00.

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 \$17,340.00.
2. Within 30 days of the effective date of this decision, San Diego Gas and 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 2015 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 August 6, 2016, 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. Application 11-11-002 remains open.
5. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1605024		
Proceeding(s):	A1111002		
Author:	ALJ Bushey		
Payer(s):	Southern California Gas Company and San Diego Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network (TURN)	5/23/2016	\$17,340.00	\$17,340.00	N/A	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	TURN	\$510	2016	\$510.00

(END OF APPENDIX)