

Decision 19-01-044 January 31, 2019

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

Joint Application of Southern California Edison Company (U338E) and San Diego Gas & Electric Company (U902E) For Cost Recovery Of The Wheeler North Reef Expansion Project Marine Mitigation Costs.	Application 16-12-002 (Filed December 1, 2016)
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**DECISION GRANTING INTERVENOR COMPENSATION CLAIM OF THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO  
DECISION 18-03-027**

<b>Intervenor:</b> The Utility Reform Network (TURN)	<b>For contribution to Decisions (D.) 18-03-027</b>
<b>Claimed:</b> \$51,056.10	<b>Awarded:</b> \$ 51,056.10
<b>Assigned Commissioner:</b> Clifford Rechtschaffen	<b>Assigned ALJ:</b> Darcie Houck

**PART I: PROCEDURAL ISSUES**

<b>A. Brief description of Decision:</b>	In Decision (D.) 18-03-027, the Commission adopted an all-party settlement supported by Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), the Office of Ratepayer Advocates (ORA) and TURN.
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**B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	<b>Intervenor</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	03/01/17	Verified
2. Other specified date for NOI:		N/A

3. Date NOI filed:	03/29/17	Verified
4. Was the NOI timely filed?		Yes.
<b>Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.16-08-006	Verified
6. Date of ALJ ruling:	11/28/2016	Verified
7. Based on another CPUC determination (specify):	N/A	
8. Has the Intervenor demonstrated customer status or eligible government entity status?		Yes.
<b>Showing of “significant financial hardship” (§1802(h) or §1803.1(b))</b>		
9. Based on ALJ ruling issued in proceeding number:	A.16-08-006	Verified
10. Date of ALJ ruling:	11/28/2016	Verified
11. Based on another CPUC determination (specify):	N/A	
12. Has the Intervenor demonstrated significant financial hardship?		Yes.
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.18-03-027	Verified
14. Date of issuance of Final Order or Decision:	03/28/18	Verified
15. File date of compensation request:	05/16/18	Verified
16. Was the request for compensation timely?		Yes.

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

#	Intervenor’s Comment(s)	CPUC Discussion
15		On May 21, 2018, TURN filed an amended claim, correcting errors in the original claim of May 16, 2018

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059).**

<b>Intervenor’s Claimed Contribution(s)</b>	<b>Specific References to Intervenor’s Claimed Contribution(s)</b>	<b>CPUC Discussion</b>
<p><b>1. Settlement Outcomes On Project Cost Forecast:</b> TURN’s testimony raised concerns with the uncertainties surrounding SCE’s project cost forecast. TURN noted that SCE had identified eight options for reef design, and at that point the California Coastal Commission (CCC) had indicated that any of the eight would be acceptable. SCE had prepared construction cost estimates for each option, ranging from \$14 to \$35 million; the construction cost of the option the utility described in its application here had a forecast of \$26 million. However, the option described in SCE’s application to the State Lands Commission for a necessary lease amendment seemed to be consistent with a different, less expensive option. TURN therefore opposed adoption of the \$26 million construction cost forecast (within the \$33 million overall forecast) set forth in the application and direct testimony.</p> <p>In its rebuttal testimony, SCE stated that it had recently determined that a less expensive option (Option 1) would be the focus of its proposal to the other state agencies. The forecasted cost for Option 1 is \$19.4 million as compared to the \$33 million overall forecast for the option described in the utility’s direct testimony.</p> <p>The Settlement Agreement provided that SCE is responsible for minimizing the costs of the Wheeler North Reef (WNR) Expansion Project. The Settlement Agreement also provided that there would be no adopted forecast at this time. Instead, once the CCC issues a coastal development permit, SCE will develop a forecast based on the project design that is the basis of that permit, and present it in a Tier 3 advice letter. A Commission resolution would then set the reasonable forecasted revenue requirement for the project.</p>	<p>TURN Testimony, pp. 4-9.</p> <p>D.18-03-027, pp. 16-18.</p> <p>D.18-03-027, pp. 12-13.</p>	<p>The decision notes that TURN’s contribution helped to balance SCE’s needs with ratepayers’ concerns on this issue (WNR Expansion Project). (See Decision at 15).</p>

<p><b>2. Settlement Outcomes on Review of Recorded Costs:</b> TURN challenged SCE’s original ratemaking proposal because it asked the Commission to permit rate recovery based upon a forecast found “reasonable,” but then permit rate recovery of “actual” costs without an opportunity for meaningful reasonableness review of the “actual” costs should they exceed the adopted forecast. TURN also raised concerns with the complicated nature of the ongoing review under SCE’s original proposal, involving annual advice letters and inclusion in annual ERRA proceedings. TURN instead recommended that the Commission perform a single after-the-fact review of the project’s costs after the project is completed.</p> <p>The Settlement Agreement provided that there would not be an authorized revenue requirement until SCE presents a Tier 3 Advice Letter with updated cost forecasts and the Commission finds such forecasts reasonable. If at the completion of the WNR Expansion Project that final recorded costs are equal to or below the authorized amount, the spending will be considered <i>per se</i> reasonable. If the final recorded costs are greater than the authorized amount, the utilities will need to demonstrate the expenses are reasonable through testimony submitted in the test year 2021 general rate case.</p>	<p>TURN Testimony, pp. 10-16.</p> <p>D.18-03-027, pp. 12-14; 19-20.</p>	<p>Verified this position in TURN’s April 10, 2017 response to SCE’s motion to establish a memorandum account. Noted that this position was adopted in the Settlement Agreement.</p>
<p><b>3. Establishment of SCE Memorandum Account:</b> SCE filed a motion seeking to establish a memorandum account to begin recording interim costs associated with the WNR Expansion Project. TURN opposed the motion based on a number of concerns about the proposal making the ratemaking for this project unnecessarily complicated, and about the limited opportunity for reasonableness review under SCE’s approach. Instead, TURN proposed a single memorandum account in which all costs (interim and otherwise) would be recorded, for a single reasonableness review after the project is completed. Although ALJ Houck granted SCE’s motion, the ruling doing so stated that the Commission shares</p>	<p>TURN Response to SCE Motion for Memorandum Account (April 10, 2017)</p> <p>ALJ’s Ruling Granting SCE’s Motion to Establish A Memorandum Account</p>	<p>Verified.</p>

<p>TURN’s concerns regarding the need for a reasonableness review, and the difference between the utility-proposed method of tracking expenses and a single memorandum account with after-the-fact reasonableness review. The ruling also directed SCE to submit a Tier 2 Advice Letter with certain specified items addressed.</p> <p>SCE filed Advice Letter 3603-E to implement the memorandum account. TURN protested the advice letter, arguing that SCE had failed to comply with the ALJ’s Ruling with regard to meeting three specific conditions. In its reply to SCE’s protest, the utility agreed outright with two of TURN’s recommendations, and modified its approach for the third.<sup>1</sup></p>	<p>Subject to Conditions Set Forth Herein and Commission Approval of a Final Decision in this Proceeding (May 1, 2017), pp. 3-4, and fn. 6.</p> <p>TURN Protest to SCE AL 3603-E (June 7, 2017).</p> <p>SCE Reply to Protest (June 14, 2017).</p>	
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**B. Duplication of Effort (§ 1801.3(f) and § 1802.5):**

	<b>Intervenor’s Assertion</b>	<b>CPUC Discussion</b>
<b>a. Was the Public Advocate’s Office at the California Public Utilities Commission (Cal Advocates) a party to the proceeding?<sup>2</sup></b>	Yes	Yes
<b>b. Were there other parties to the proceeding with positions similar to yours?</b>	Yes	Yes
<b>c. If so, provide name of other parties:</b> The only active parties, other than the utilities, were TURN and ORA.		Verified
<b>d. Intervenor’s claim of non-duplication:</b>  TURN worked closely with ORA to avoid duplication throughout this proceeding where the intervenors’ positions were similar. <sup>3</sup> TURN took the lead role in propounding discovery, and worked with ORA to present joint positions in the Case Management Statement filed before the prehearing		Verified. Noted that TURN contributed to the joint Case Management Statement, and that, for the same issues, it presented different arguments than the Public Advocate’s Office. For

<sup>1</sup> If the Commission needs TURN to provide a copy of TURN’s protest to SCE AL 3603-E or the utility’s reply to that protest, TURN would be glad to do so upon request.

<sup>2</sup> The Office of Ratepayer Advocates (ORA) was renamed the Public Advocate’s Office at the California Public Utilities Commission (Cal PA), pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

<sup>3</sup> On one key issue, TURN and ORA took very different approaches in prepared testimony, with ORA recommending an audit of recorded costs once the project was complete, while TURN called for a reasonableness review.

<p>conference, and in the negotiation of the settlement agreement.</p> <p>The Commission should find that TURN's participation was efficiently coordinated with the participation of ORA wherever possible, so as to avoid undue duplication and to ensure that whenever duplication occurred, it 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>	<p>example, TURN protested the reasonableness of SCE's "choice of Project." (See Case Management Statement at 5).</p>
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<p><b>a. Intervenor's claim of cost reasonableness:</b></p> <p>TURN's request for intervenor compensation seeks an award of approximately \$50,000 as the reasonable cost of our participation in this proceeding. This amount reflects the equivalent of approximately three weeks of full-time work for a single attorney who doubled as TURN's witness. Given the work associated with reviewing and understanding SCE's original proposal in testimony, as expanded in its supplemental testimony and then substantially revised in its rebuttal testimony, the number of hours and associated attorney costs are very reasonable.</p> <p>TURN's participation in this proceeding sought to promote the interests of SCE's customers in ensuring that the costs of the WNR Expansion Project were kept to a minimum and were reviewed in a manner that would ensure the recorded costs are reasonable. The project as originally proposed was forecasted to cost \$33 million, while the revised proposal that was the focus of SCE's rebuttal testimony has a forecast of \$19.4 million. The ratemaking as proposed raised concerns that actual costs that exceed the adopted forecast might never be meaningfully reviewed for reasonableness; the adopted settlement provides specifically for a review of above-forecast costs. TURN submits that both of these elements of the settlement and the final decision demonstrate benefits to SCE's customers that are likely to be far in excess of the cost of TURN's intervenor compensation.</p> <p>The Commission should conclude that TURN's request for intervenor compensation is reasonable under the circumstances here.</p>	<p><b><u>CPUC Discussion</u></b></p> <p>The Commission finds that TURN's claim is reasonable given TURN's substantial contribution to this proceeding. TURN submitted substantive protests and responses to SCE's pleadings that contributed to the resolution of the proceeding's issues. We agree with TURN's reasonableness assessment.</p>
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<p><b>b. Reasonableness of hours claimed:</b></p> <p>TURN seeks compensation for approximately 100 hours of time devoted to substantive work in this proceeding. Robert Finkelstein, TURN’s General Counsel, served both as TURN’s attorney and witness for this matter. While there were relatively small amounts of other TURN attorney time associated with the effort (primarily from strategic discussions and such), TURN has chosen not to seek compensation for those hours. This is the equivalent of approximately three weeks of full-time work on the proceeding, which is a very reasonable amount given the effort undertaken to obtain information regarding the project as initially proposed, develop testimony on the basis of that information, and then assess the substantially revised position taken in the utility’s rebuttal testimony, as well as the effort to develop and present the settlement agreement.</p> <p>TURN is also seeking compensation for 6.5 hours devoted to compensation-related matters, primarily 6.0 hours associated with the preparation of this request by Mr. Finkelstein. TURN assigned the task to Mr. Finkelstein despite his relatively high hourly rate because the combination of his in-depth familiarity with the rulemaking and his extensive experience with compensation requests ensured that the request could be prepared in a relatively small number of hours and a lower total cost, even at the relatively high hourly rate.</p> <p>TURN submits that our recorded attorney hours in this proceeding, as adjusted for purposes of this request, are reasonable. As such, TURN requests an award of compensation in the full amount requested.</p>	<p>The Commission finds that the hours claimed by TURN are reasonable. The subject matter of this proceeding was complex, and TURN economized its resources by using one person for two functions.</p>									
<p><b>c. Allocation of hours by issue:</b></p> <p>TURN has allocated all of our attorney by issue area or activity, as is evident in our attached timesheets (Attachment 2) and in Attachment 4, which shows the allocation of TURN’s time by attorney and issue/activity area. The following codes relate to specific issue/activity areas addressed by TURN.</p> <table border="1" data-bbox="237 1451 1203 1843"> <thead> <tr> <th>Code</th> <th>Description</th> <th>Total Hours</th> </tr> </thead> <tbody> <tr> <td>GP</td> <td>General participation – work of a general nature such as the initial review of the application and testimony, preparing the protest, preparing for and attending PHC, dealing with procedural matters, other activities that tend to not be issue- or task-specific</td> <td>24.5</td> </tr> <tr> <td>RM</td> <td>Work devoted to ratemaking issues such as general issues regarding establishment of memorandum accounts, manner of review for recorded costs</td> <td>6.75</td> </tr> </tbody> </table>	Code	Description	Total Hours	GP	General participation – work of a general nature such as the initial review of the application and testimony, preparing the protest, preparing for and attending PHC, dealing with procedural matters, other activities that tend to not be issue- or task-specific	24.5	RM	Work devoted to ratemaking issues such as general issues regarding establishment of memorandum accounts, manner of review for recorded costs	6.75	<p>The Commission finds that TURN’s allocation of time by issue is reasonable.</p>
Code	Description	Total Hours								
GP	General participation – work of a general nature such as the initial review of the application and testimony, preparing the protest, preparing for and attending PHC, dealing with procedural matters, other activities that tend to not be issue- or task-specific	24.5								
RM	Work devoted to ratemaking issues such as general issues regarding establishment of memorandum accounts, manner of review for recorded costs	6.75								

Cost	Work devoted to issues regarding the cost forecast for the WNR Expansion Project.	13	
MA	Work devoted to specific issues regarding SCE’s request for an interim memorandum account and the utility’s implementation of such an account through A.L. E-3603.	17	
Upd	Work devoted to obtaining updates regarding status of project development and review by other agencies	2.75	
Proc	Work on specific procedural issues; here, the hours for TURN’s response to an SCE motion to shorten time to respond to its motion seeking a memorandum account	4.75	
Settle	Work devoted to development and presentation of the all-party, all-issue settlement adopted in D.18-03-027.	9.5	
Coord	Work devoted to coordination ORA on issues where TURN and ORA had similar positions,	0.75	
#	Work that covered RM and Cost category efforts, but is difficult to specifically allocate to one or the other (mostly for drafting testimony). TURN estimates that this time could, if necessary, be allocated 50/50 between the RM and Cost categories.	15.75	
Comp	Intervenor Compensation: work preparing TURN’s NOI and Request for Compensation	6.5	
<b>TOTAL – Non-compensation work</b>		<b>94.75</b>	

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	1.5	\$510	D.16-11-004	\$765.00	1.5	\$510	\$765.00
R. Finkelstein	2017	93.25	\$520	D.17-11-032	\$48,490.00	93.25	\$520	\$48,490.00
<b>Subtotal: \$49,255.00</b>						<b>Subtotal: \$ 49,255.00</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	2017	0.5	\$260.00	50% of 2017 rate	\$130.00	.05	\$260.00	\$130.00
Robert Finkelstein	2018	6.0	\$265.00	50% of 2018 rate (See Comment 1, below)	\$1,590.00	6.0	\$265.00	\$1590.00
<b>Subtotal: \$ 1,720.00</b>						<b>Subtotal: \$ 1,720.00</b>		
<b>COSTS</b>								
<b>#</b>	<b>Item</b>	<b>Detail</b>			<b>Amount</b>	<b>Amount</b>		
	Lexis/Nexis	Computerized research costs associated with analysis of utility proposal, alternatives			\$75.70	\$75.70		
	Photocopies	Copies related to A.16-12-002			\$1.50	\$1.50		
	Postage	Postage for mailing filings in A.16-12-002			\$3.90	\$3.90		
<b>Subtotal: \$ 81.10</b>						<b>Subtotal: \$81.10</b>		
<b>TOTAL REQUEST: \$51,056.10</b>						<b>TOTAL AWARD: \$51,056.10</b>		
<p>*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' 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 are typically compensated at ½ of preparer's normal hourly rate</p>								
<b>ATTORNEY INFORMATION</b>								
<b>Attorney</b>		<b>Date Admitted to CA BAR<sup>4</sup></b>		<b>Member Number</b>		<b>Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation</b>		
Robert Finkelstein		June 1990		146391		No		

<sup>4</sup> This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch> .

**C. Attachments Documenting Specific Claim and Comments on Part III  
(Intervenor completed; attachments not attached to final Decision):**

<b>Attachment or Comment #</b>	<b>Description/Comment</b>
Attachment 1	<b>Certificate of Service</b>
Attachment 2	<b>Timesheets for TURN’s Attorney</b>
Attachment 3	<b>TURN Direct Expenses Associated with D.18-03-027</b>
Attachment 4	<b>TURN Hours Allocated by Issue</b>
Comment 1	<p><b>Hourly Rates for TURN Attorneys</b></p> <p>The Commission has authorized an hourly rate of \$510 for work performed by Mr. Finkelstein in 2016, and \$520 for work performed by Mr. Finkelstein 2017, as indicated in the table above.</p> <p>For 2018, TURN seeks an hourly rate of \$530 for Mr. Finkelstein’s work. This represents the 2.3% COLA for 2018 provided for in Res. ALJ-352, rounded down to the nearest \$5 increment.</p>

**PART IV: OPPOSITIONS AND COMMENTS**

**Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (*see* § 1804(c))**

<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 (<i>see</i> Rule 14.6(c)(6))?</b>	Yes
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**FINDINGS OF FACT**

1. The Utility Reform Network has made a substantial contribution to D.18-03-027.
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.
4. The total of reasonable compensation is \$51,056.10.

**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 shall be awarded \$51,056.10.
2. Within 30 days of the effective date of this decision, Southern California Edison Company and San Diego Gas & Electric Company shall pay The Utility Reform Network their respective shares of the total amount of the award, based on their California-jurisdictional electric revenues for the 2017 calendar year, to reflect the year in which the proceeding was primarily litigated. If such data is unavailable, the most recent electric revenue data shall be used. 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 30, 2018, 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 January 31, 2019, at Sacramento, California.

MICHAEL PICKER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

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

<b>Compensation Decision:</b>	D1901044	<b>Modifies Decision?</b>	No
<b>Contribution Decision:</b>	D1803027		
<b>Proceeding:</b>	A1612002		
<b>Author:</b>	ALJ Houck		
<b>Payers:</b>	Southern California Edison Company and 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 16, 2018	\$51,056.10	\$51,056.10	N/A	N/A

**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	\$510	2016	\$510
Robert	Finkelstein	Attorney	TURN	\$520	2017	\$520
Robert	Finkelstein	Attorney	TURN	\$530	2018	\$530

**(END OF APPENDIX)**