

Decision 11-09-036 September 22, 2011

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

Application of The Utility Reform Network for an Award of Intervenor Compensation for Substantial Contributions to Resolution L-411 and the Commission Proceeding Leading Thereto.

Application 11-06-034  
(Filed June 9, 2011)

**DECISION AWARDING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO RESOLUTION L-411**

<b>Claimant: The Utility Reform Network (TURN)</b>	<b>For contribution to Resolution (Res.) L-411</b>
<b>Claimed: \$19,953</b>	<b>Awarded: \$18,895<sup>1</sup></b>
<b>Assigned Commissioner: Legal Division</b>	<b>Assigned ALJ: Michelle Cooke</b>

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:** In Resolution L-411, the Commission established a one-way memorandum account for all cost-of-service rate regulated utilities that do not address the New Tax Act<sup>2</sup> in a 2011 or 2012 test year General Rate Case (GRC), in order to track the impacts of the New Tax Act. The resolution authorized the impacted utilities to use savings from the new tax law to reduce rates or to invest in additional, needed utility infrastructure, without the need for a formal application or advice letter so long as the investment met specified guidelines.

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:		

<sup>1</sup> See footnote 4 at 7.

<sup>2</sup> The "New Tax Act" refers to the federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

3. Date NOI Filed:	June 9, 2011 <sup>3</sup>	Correct
4. Was the notice of intent timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	P.10-08-016	Correct
6. Date of ALJ ruling:	November 22, 2010	Correct
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	P.10-08-016	Correct
10. Date of ALJ ruling:	November 22, 2010	Correct
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		A rebuttable presumption pursuant to §1804(b)(1) is applied to TURN’s participation here, as a substantive finding on significant financial hardship (referenced above) was issued within a year of the commencement of this proceeding.
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	Resolution L-411	Correct
14. Date of Issuance of Final Decision:	4/15/11	Correct
15. File date of compensation request:	6/9/11	Correct
16. Was the request for compensation timely?		Yes

<sup>3</sup> In D.98-11-049, the Commission determined that an NOI incorporated in the timely-filed Request for Compensation for work on an advice letter is itself timely filed. TURN attached its NOI its timely-filed request for compensation.

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Claimant’s claimed contribution to the final Resolution:**

<b>Contribution</b>	<b>Citation to Decision or Record</b>	<b>Showing Accepted by CPUC</b>
<p>1. The resolution that became L-411 started off as Draft Resolution W-4867, issued on approximately December 30, 2010. The initial draft resolution sought to ensure that the cost savings that would flow from the New Tax Act would be reflected in rates. It would have made “subject to refund” the rates of all cost-of-service-regulated utilities; directed workshops to address the impact the New Tax Act is likely to have on the various utilities; and only then have the Utility, Audit, Finance &amp; Compliance Branch of the Division of Water and Audits (DWA) recommend to the Commission how to resolve issues associated with ensuring the tax-related savings are reflected in rates.</p> <p>Alone among the parties submitting comments at this time, TURN’s comments on the original draft resolution supported the general principle of ensuring that the tax benefits under the New Tax Act would be fully reflected in rates. TURN also called for expanding the treatment to the Small Business Job Act of 2010.</p> <p>The final resolution bore a different name, was issued through the Legal Division rather than DWA, and addressed the substance of many of the issues that draft Res. W-4867 would have deferred to workshops. However, it maintained the fundamental principle that the cost savings from the New Tax Act should flow to ratepayers, rather solely to utility shareholders.</p>	<p>Draft Resolution W-4867.</p> <p>TURN Comments, January 7, 2011.</p> <p>Res. L-411, Finding 6.</p>	<p>Yes</p>
<p>2. A second version of the draft resolution (now designated Res. L-411) issued on or about February 7, 2011. The revisions included abandoning the “subject to refund” approach (that would have permitted the Commission to defer more of the issues) in</p>	<p>Draft Res. L-411, Version 2, pp. 3-4 and Finding and Conclusion 8.</p>	<p>Yes</p>

<p>favor of giving the utility the choice of using the benefits to reduce rates or to fund “additional, needed capital investments.”</p> <p>TURN submitted lengthier comments on the second version on February 14, 2011. TURN renewed its call for inclusion of the Small Business Job Act, and raised concerns about the “additional, needed capital investments” approach in the draft. TURN also noted that certain types of capital investment should be excluded (such as vehicles and real property), and that the new approach would warrant before-the-fact review (through an advice letter or application) rather than an after-the-fact reasonableness review.</p> <p>In the next version of the Draft Resolution, the Commission included the Small Business Job Act and identified vehicles and real property as capital investments NOT eligible for funding with tax benefits.</p>	<p>TURN Comments, 2/14/11.</p> <p>Draft Resolution Version 3 (2/28/11), p. 10; and Findings and Conclusions 3-4.</p>	
<p>3. A fifth version of Draft Resolution L-411, issued on or about March 10, 2011, provided two ways for a utility to proceed if it wished to invest its tax savings in utility infrastructure rather than use those savings to reduce rates; it could file an application, or submit an advice letter that generally described the type of investment, cost, and how it would be funded with tax savings.</p> <p>Commissioners Sandoval and Ferron convened an all-party meeting on March 30, 2011. The cost-of-service-regulated utilities were represented in substantial numbers. TURN served as the primary representative of consumer interests. (DRA also attended but participated in a very limited fashion.) At the conclusion of the meeting, the Commissioners invited parties to submit alternatives that might serve as approaches to capturing the tax benefits while mitigating some of the concerns raised in the meeting.</p> <p>On April 5, 2011, TURN submitted an alternative approach to the pre-spending application or advice letter that had been a</p>	<p>Draft Res. L-411, Version 5, p. 6 and Ordering Paragraph 7.</p> <p>TURN April 5, 2011 letter.</p>	<p>Yes</p>

<p>subject of much discussion at the previous week’s all-party meeting. TURN proposed that the final Resolution establish clear guidelines of the types of capital spending the Commission seeks to encourage. To the extent a utility stays within those guidelines, it would not need to seek pre-approval of its spending proposal. Should a utility wish to invest the tax benefits in an area outside of the guidelines, it would need to file a pre-spending application or advice letter. TURN submitted six such guidelines for the Commission’s consideration.</p> <p>Almost immediately after TURN served the 4/5/11 letter on the other parties, TURN engaged in discussions with PG&amp;E to further refine the proposed guidelines. As a result of these discussions, PG&amp;E’s 4/8/11 letter presenting the utility’s tax savings estimate also stated the utility’s support for TURN’s 4/5/11 proposal, with a few modifications that TURN had generally agreed would be consistent with that proposal.</p> <p>Resolution L-411 as adopted included revisions to reflect TURN’s proposal.</p>	<p>PG&amp;E April 8, 2011 letter.</p> <p>Res. L-411, p. 6.</p>	
<p>Summary: The path from the initial draft resolution to the final version of Res. L-411 was somewhat more tortuous than is usually the case for a resolution, as evidenced by six or seven drafts issued over only a four month period. In the end, though, Resolution L-411 reflects TURN’s substantial contribution in two very important ways. First, TURN alone among the active parties supported the underlying goal of ensuring that the tax benefits that cost-of-service-regulated utilities could realize under the New Tax Act would benefit utility customers, either in the form of reduced rates or through investment in necessary utility infrastructure. This element of Resolution L-411 should not be taken for granted, as even at the end of the process several utilities were calling for the Commission to reject it altogether.</p>		<p>Yes</p>

<p>Second, TURN’s participation proved to be critical in finding an approach that would balance the need for pre-approval of additional infrastructure spending with the accelerated time frame for such review and approval under the terms of the New Tax Law. TURN’s proposal to develop spending categories that would serve as “safe havens” of a sort ended up embodied in the final resolution.</p> <p>On several issues TURN’s position was not reflected in the final resolution. However, the Commission should find that TURN made a substantial contribution even on those issues, as several of the earlier draft Resolutions would have adopted outcomes consistent with TURN’s position. (See, for example, Version 4 (including the Small Business Job Act) and Version 5 (rejecting calls by SCE to exempt utilities with a 2012 GRC).) The Commission has long recognized that outcomes in a proposed decision, even where not adopted by the Commission, demonstrate the ALJ adopting factual, legal or policy contentions of an intervenor that constitute a “substantial contribution” under Section 1802(i). TURN submits that similar treatment is appropriate for a draft resolution that adopts factual, legal or policy contentions of an intervenor.</p>		
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**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

Claimant		CPUC Verified
<p><b>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</b></p>	<p>Yes</p>	<p>Correct</p>
<p><b>b. Were there other parties to the proceeding?</b></p>	<p>Yes</p>	<p>Correct</p>
<p><b>c. If so, provide name of other parties:</b></p> <p>Each of the four major energy utilities (PG&amp;E, SCE, SoCalGas and SDG&amp;E (jointly as the Sempra Utilities)); the water utilities through California Water Association (CWA); the small local exchange carriers (LECs), Mountain Utilities, NRG EnergyCorp., PacifiCorp, and Alpine Natural Gas.</p>		<p>Correct</p>
<p><b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented,</b></p>		<p>We make no reductions to TURN’s claim for</p>

<p><b>complemented, or contributed to that of another party:</b></p> <p>Coordination in the advice letter process is more challenging than in other Commission proceedings, due to the more compressed time frame and general absence of discovery and briefs. Furthermore, coordination to avoid duplication was largely unnecessary here, as TURN was the only non-utility party who was an active participant in this matter. DRA’s participation was generally limited to participation in an all-party meeting conducted relatively late in the process. The Commission should therefore determine that there was no material duplication in the proceeding.</p>	<p>unnecessary duplication of effort with other parties.</p>
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

**General Claim of Reasonableness (§§ 1801 & 1806):**

<b>Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation</b>	<b>CPUC Verified</b>
<p>In Res. L-411 the Commission described how “there could be substantial amounts in deferred tax reserves that do not get reflected in rates unless the Commission takes action.” (Res. L-411, p. 3). As PG&amp;E’s letter of April 8, 2011 illustrates, these could amount to tens of millions of dollars for a single utility during the 2011-2013 period. (PG&amp;E Letter of April 8, 2011, Appendix A). TURN’s request of approximately \$20,000 is extremely reasonable given the amounts at stake, TURN’s role as the sole voice on behalf of consumers throughout most of the proceeding, and the outcome achieved.</p>	<p>We agree that TURN’s hours are reasonable and that its efforts resulted in measurable benefits to customers, which far outweigh the cost of TURN’s participation.</p>

**A. Specific Claim:\***

<b>CLAIMED</b>						<b>CPUC AWARD</b>			
<b>ATTORNEY AND ADVOCATE FEES</b>									
<b>Item</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Basis for Rate*</b>	<b>Total \$</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Total \$</b>
R. Finkelstein	2011	36.75	470	D.10-06-046 rate and Resolution	17,273	2011	34.50 <sup>4</sup>	470	16,215
<b>Subtotal: \$17,273</b>						<b>Subtotal: \$16,215</b>			

<sup>4</sup> The correct total of Finkelstein’s 2011 hours is 34.50, not 36.75 as TURN lists here. We use this corrected figure and re-compute TURN’s award.

EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
W. Marcus	2011	5.08	250	D.10-09-045 <sup>5</sup>	1,270	2011	5.08	250	1,270
<b>Subtotal: \$1,270</b>					<b>Subtotal: \$1,270</b>				
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
R. Finkelstein	2011	6.00	235	½ D.10-06-046 rate and Resolution ALJ-267	1,410	2011	6.00	235	1,410
<b>Subtotal: \$1,410</b>					<b>Subtotal: \$1,410</b>				
<b>TOTAL REQUEST: \$19,953</b>					<b>TOTAL AWARD: \$18,895</b>				
<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>** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

**B. Comments Documenting Specific Claim:**

Comment #	Description/Comment
#1	<p><b>Reasonableness of TURN Hours:</b></p> <p>Robert Finkelstein was the sole TURN attorney handling this matter. He received support throughout from William Marcus of JBS Energy, who recorded a very small number of hours for his work in that role.</p> <p>The number of hours recorded by both Mr. Finkelstein and Mr. Marcus followed the same pattern. A relatively small amount of hours was recorded in January (when Resolution W-4867 issued with its simpler approach that would have largely deferred resolution of most of the underlying issues), with slightly higher amounts in February and through mid-March as additional and more complicated versions of the draft Resolution L-411 were issued for comment. In late-March through mid-April, a substantially greater number of hours were recorded, consistent with the need to</p>

<sup>5</sup> D.08-11-053 approved this rate for work performed in 2008; JBS Energy has not changed its rate for Mr. Marcus's work since then.

	<p>prepare for and participate in the all-partying meeting on March 30, the development and presentation of TURN’s alternative approach to pre-spending review, discussions with PG&amp;E to further develop that alternative approach, and the final comment letter submitted in mid-April, just before the Commission’s vote on Resolution L-411. Finally, TURN has included a few hours devoted to reviewing and submitting comments on Draft Resolution L-411A, issued in May of 2011. TURN submits that this is consistent with our past practice of including in a compensation request hours recorded for the implementation of the decision that reflects TURN’s substantial contribution, such as a post-decision advice letter. Even with all of this activity, Mr. Finkelstein recorded less than 40 hours total for work on this matter, with approximately 30 hours over the final two week period prior to the Commission’s vote. (Mr. Marcus recorded less than 5 hours over that same two-week period.) TURN submits that devoting a few hours per week on average, with approximately two days per week devoted to this matter during its most active phase, is a reasonable number of hours given the importance of the issue and the fact that TURN was the only consistently active party on behalf of ratepayers.</p> <p>Finally, TURN is requesting compensation for 6.0 hours devoted to compensation-related matters, primarily preparation of this request for compensation. The number of draft resolutions and the shifting manner in which each addressed the underlying issues caused TURN to devote more time to the substantial contribution description than would normally be the case for a resolution that addresses a relatively narrow range of issues. TURN submits that this small number should be found reasonable.</p>
<p>#2</p>	<p><b>Allocation of Hours:</b> TURN typically includes in its compensation requests an allocation of time among the issues that it addressed. Such an allocation is close to impossible under the circumstances of the process that produced Resolution L-411. First, the overriding issue from the first issuance of draft Res. W-4867 through adoption of Resolution L-411 was whether the unanticipated decreases in tax expense due to the New Tax Act would flow to benefit ratepayers. Even at the very last, many of the utilities were calling upon the Commission to abandon the draft resolution altogether and to take no action whatsoever. Second, almost none of the work associated with TURN’s efforts in this matter addressed a single issue. Instead, the comments and letters to the Commission addressed an array of the implementation issues. And since comments on the different versions of the draft Resolution were often due within a few days of the issuance of the newest version, TURN generally worked on the issues all at once.</p> <p>Therefore, TURN has not attempted to allocate the individual daily time entries by issue or activity. Instead, TURN submits the following as a reasonable general allocation of the hours among the various issues TURN addressed:</p> <ul style="list-style-type: none"> <li>The appropriateness of capturing benefits for ratepayers – 20%</li> <li>General need for specificity of “additional, needed capital investment” – 15%</li> <li>Development and presentation of proposed guidelines for “additional, needed capital investment” – 40%</li> <li>Inclusion of Small Business Job Act – 15%</li> </ul>

	<p style="text-align: center;">Treatment of utilities with a 2012 Test Year GRC – 10%</p> <p>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.</p>
#3	<p><b>Hourly Rate for TURN attorney in 2011:</b> The Commission has not previously authorized an hourly rate for TURN’s attorneys or consultants where the substantive work in the proceeding occurred in 2011. In this proceeding TURN requests compensation using the previously-approved 2008 hourly rate for its attorney’s work, consistent with Resolution ALJ-267 as applied to these circumstances. TURN also uses the previously approved hourly rate for its consultant because the firm has not sought to increase that hourly rate since then.</p>

**C. CPUC Disallowances:** 2.25 hrs of Finkelstein’s 2011 time for a minor miscalculation.

**PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?** No

**B. Comment Period: Was the 30-day comment period waived?** Yes

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Resolution (R.) L-411.
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 contribution is \$18,895.

**CONCLUSION OF LAW**

1. The claim satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$18,895.
2. Within 30 days of the effective date of this decision, we direct the four largest energy utilities: Pacific Gas and Electric Company, Southern California Edison Company,

Southern California Gas Company and San Diego Gas & Electric Company, and the Class A water companies: California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company to pay claimant the total award. We direct the four largest major utilities: Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and San Diego Gas & Electric Company, and the Class A water companies: California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company to allocate payment responsibility among themselves based on their 2011 electric and gas revenues for the four large energy utilities, and on their 2011 water revenues for the Class A water companies, reflecting the year in which this matter was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 23, 2011, the 75<sup>th</sup> day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding is closed.

This decision is effective today.

Dated September 22, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

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

<b>Compensation Decision:</b>	D1109036	<b>Modifies Decision?</b> No
<b>Contribution Resolution:</b>	Res. L-411	
<b>Proceeding:</b>	A1106034	
<b>Author:</b>	ACALJ Michelle Cooke	
<b>Payers:</b>	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water 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	06/9/11	\$19,953	\$18,895	No	minor miscalculation in hours

**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	The Utility Reform Network	\$470	2011	\$470
William	Marcus	Expert	The Utility Reform Network	\$250	2011	\$250

**(END OF APPENDIX)**