

Decision 12-06-014 June 7, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations.

Rulemaking 09-10-032
(Filed October 29, 2009)

DECISION AWARDING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 11-06-022

Claimant: The Utility Reform Network (TURN)	For contribution to D.11-06-022 (Decision)
Claimed: \$33,337¹	Awarded: \$33,041
Assigned Commissioner: Mark J. Ferron	Assigned ALJ: David M. Gamson

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	This decision establishes local capacity procurement obligations for 2012 applicable to Commission-jurisdictional electric load-serving entities (LSEs). These procurement obligations are based on an annual study of local capacity requirements performed by the California Independent System Operator (CAISO) for 2012. The total local capacity requirements determined by the CAISO for all local areas combined decreased slightly from the prior year; the decrease is from 28,058 megawatts (MW) in 2011 to 26,778 MW in 2012. The existing capacity needed decreased from 27,094 MW in 2011 to 26,158 in 2012. In addition, the decision adopts many Resource Adequacy (RA) program refinements.
-----------------------------------	---

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

Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):	
1. Date of Prehearing Conference:	December 9, 2009 Correct

¹ See footnote 1 at 10.

2. Other Specified Date for NOI:	December 4, 2009 ²	Correct
3. Date NOI Filed:	November 20, 2009	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(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
Showing of “significant financial hardship” (§ 1802(g)):		
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?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-06-022	Correct
14. Date of Issuance of Final Decision:	July 1, 2011	Correct
15. File date of compensation request:	August 30, 2011	Correct
16. Was the request for compensation timely?		Yes

C. TURN’s Additional Comment on Part I:

In D.11-08-012 the Commission awarded compensation to TURN for its substantial contributions to the decisions issued through the end of 2010 (D.10-12-038). Pursuant to Rule 17.2 of the Commission’s Rules of Practice and Procedure, having been found eligible for an award of compensation in the earlier phase of this proceeding means TURN remains eligible in this later phase of the same proceeding.

² The Order Instituting Rulemaking (Order), issued on November 4, 2009 at 11 states that “any party that expects to claim compensation for its participation in this rulemaking, shall file its NOI no later than 30 days after the date of this order.”

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>2012 Local Capacity Requirements Study</p> <p>TURN took the lead in shedding light on significant challenges resulting from the CAISO local capacity requirements (LCR) study and their impact on ratepayers. TURN recommended that the Commission direct San Diego Gas & Electric Company (SDG&E) and the CAISO to pursue such benefits through technical and ratings mechanisms, such as examining the need for a new Local Area in the SDG&E region.</p>	<p><i>See</i> TURN’s May 6, 2011 Comments on CAISO’s Filed 2012 LCR Study (at 2): “TURN believes the Commission should be extremely disappointed with the <i>2012 Study</i>. The significant ratepayer benefits of reduced LCRs that both the CAISO and SDG&E had claimed the new Sunrise Powerlink (Sunrise) transmission line would provide are not evident in the <i>2012 Study</i>.”</p> <p><i>See</i> TURN May 6th Comments, at 4: “TURN is concerned that the major reduction in San Diego LCRs suggested by the <i>Draft Study Results</i> might not accrue to SDG&E ratepayers if the GIV-SD LCRs do not fall along with the San Diego Local Area’s LCRs. If GIV-SD LCRs do not fall significantly, SDG&E customers would still need to support the procurement of large quantities of Local RA.”</p> <p>TURN’s May 13, 2011 Reply Comments, at 2 (recommending Commission direction for a Non-Summer LCR for SDG&E customers)</p> <p>D.11-06-22, at 11: “We recognize that TURN and SDG&E have raised important technical issues in their comments. These are issues which are properly considered at the CAISO before they can be incorporated into a decision here. We request that the CAISO perform</p>	<p>Yes</p>

	<p>the studies suggested by TURN and SDG&E and incorporate any significant findings and outcomes into the 2013 LCR study.”</p>	
<p>Coincident Adjustment Factor</p> <p>TURN demonstrated that Alliance for Retail Energy Markets (AReM’s) proposed Coincident Adjustment Factor must not be adopted at this point in time because of a lack of analysis and implementation efforts. TURN highlighted the fact that one problematic result could be investor owned utilities (IOUs) serving only the most expensive loads, with possible adverse effects on ratepayers.</p>	<p>TURN February 8, 2011 Opening Comments, at 4 (describing AReM proposal as “one step on a road toward the selective deconstruction of bundled loads by non-IOUs LSEs that could leave the IOUs serving only the ‘peakiest,’ most expensive loads.”)</p> <p>D.11-06-22, at 16: “TURN’s concern is that IOU bundled customers may experience adverse rate impacts because the IOUs, because of their obligation to serve and the fact that they serve nearly all residential customers, on average serve more costly customers...While changes to the coincident adjustment factor would not directly change the overall distribution of customers among all LSEs, it would change the allocation of costs among LSEs.”</p> <p>D.11-06-022, at 18: “[W]e will not adopt AReM’s proposal at this time. We agree that there is significant technical analysis which remains to be produced before this proposal can be implemented. We request Energy Division and California Energy Commission (CEC) staff to work to refine this concept over the course of the next year and provide a recommendation to the Commission in next year’s RA proceeding for further consideration and possible implementation in 2013.”</p>	<p>We agree with TURN’s claimed contribution here with the exception of its reference at 16 in support of TURN’s position. The decision 16 states that “TURN’s concern is that IOU bundled customers may experience adverse rate impacts because the IOUs, and their obligation to serve and the fact that they serve nearly all residential customers, on average serve more costly customers,” was not supported by analysis of specific impacts. We elect to forgo minor disallowances here for lack of substantial contribution in this area.</p>

<p>Planned Outage Adder Proposal</p> <p>TURN demonstrated that the proposed Planned Outage Adder would not be an efficient or cost-effective way of ensuring capacity exists for planned outages.</p>	<p>TURN’s February 8, 2011 Opening Comments, at 2 (stating that the proposed planned outage adder would “impose, in effect, an increase in the Planning Reserve Margin (PRM) in non-peak months without any demonstration that such extra capacity is actually needed.”)</p> <p>D.11-06-012, at 31, rejected the Planned Outage Adder proposal: “For all of these reasons, as compared to other alternatives in this record, we find that the Planned Outage Adder would be significantly more likely to create a more inefficient procurement relative to the current LSE replace rule. We therefore reject this approach.”</p> <p>D.11-06-012, at 30, states, “The Planned Outage Adder would essentially increase the Planning Reserve Margin by requiring all LSEs to contract for additional RA capacity regardless of the CAISO’s need for it and whether RA units actually go on outage.”</p>	<p>Yes</p>
<p>Local Resource Adequacy Price Waiver Trigger</p> <p>TURN’s Comments demonstrated that there is no need to change the waiver trigger at present. TURN highlighted the lack of factual support for the proposal and showed how present practices have not/would not lead to predicted behaviors.</p>	<p>See TURN’s February 8, 2011 Opening Comments (at 4-5): “First, to TURN’s knowledge, the LSEs have rarely asked for waivers based on the trigger. Nor is TURN aware of any instance in which the waiver trigger has stymied development of needed new resources in a local area. In fact, in the one large local area that faces significant Local RA procurement issues – the San Diego Local Reliability Area (see above) – SDG&E has been actively pursuing new resources to meet local procurement requirements and is apparently willing to pay the full price of new resources to do so.”</p>	<p>Yes</p>

	<p><i>See</i> TURN’s February 22, 2011 Reply Comments (at 4): “TURN does not believe the differences in these prices will, in practice, cause the conflicted behavior these generators describe. For example, TURN does not believe LSEs will (or should) “defer to CAISO backstop procurement mechanisms” as GenOn fears. It is conceivable that generators will refrain from making sales of RA capacity to LSEs in hopes of being designated as a Capacity Procurement Mechanism (CPM) resource, but generators pursue such strategies at their own risk, given that signing an RA contract with an LSE can provide much more certainty than waiting for a CPM designation of uncertain length and volume. TURN does not believe the CAISO’s CPM price, even if accepted, will alter the dynamics of local RA procurement.”</p> <p><i>See</i> TURN’s Comments to Proposed Decision, at 3 (highlighting lack of evidence to show that current trigger is impeding LSEs’ ability to meet their load capacity LCR procurement obligations).</p> <p>D.11-06-022, at 33, states, “TURN does not believe there is an obvious need to change the waiver trigger at this time.”</p> <p>D.11-06-22, at 34: “We will not change the RA trigger waiver price at this time...The fact that the waiver has been rarely used since its adoption in 2006 shows that LSEs do not appear to be subject to market power in such a way as to make compliance with RA obligations</p>	
--	--	--

	impossible.”	
<p>Monthly/Seasonal Local Resource Adequacy Requirement</p> <p>TURN demonstrated the need to develop further study and analyses before implementing annual or seasonal Local RA requirements. TURN anticipated that such study would be time-intensive and require substantial additional efforts from the CAISO.</p>	<p>February 8, 2011 Opening Comments, at 3 (recommending that the Commission ask SDG&E, the CAISO, and the CEC to pursue a different approach to addressing this particular issue), at 3 (recommending that the Commission request a study of potential sub-annual Local RA requirements solely for the SDG&E service territory).</p> <p><i>See</i> February 22, 2011 Reply Comments, at 3: “TURN also recognizes the CAISO’s caution that performing monthly or seasonal LCR studies would be time-intensive, and thus believes that any Commission directive to pursue such efforts should account for the commitment of requisite modeling talent.”</p> <p>D.11-06-012, at 44, states, “At this time, we do not have sufficient information to adopt a seasonal RA requirement... The CAISO spent a considerable amount of time reaching stakeholder support for the current LCR modeling requirements and methodologies. To do so again with a new study would be time consuming, in addition to actually doing the work of modeling. Were the CAISO or any other party to perform this study, a lengthy description of modeling work and methodology would need to be composed and vetted via stakeholders, concurrent with study results.”</p>	<p>Yes</p>

<p>Aggregation of PG&E Local Areas</p> <p>TURN helped to demonstrate the continued need for aggregating the “other PG&E” local areas, based on significant transactional burdens on all LSEs, and the potential exercise of market power in some local areas.</p>	<p>TURN February 22, 2011 Reply Comments, at 2 (describing problems resulting from disaggregation and observing that “Calpine controls significant amounts of geothermal capacity in the North Coast / North Bay and disaggregation would greatly enhance its market power in that local reliability area.”)</p> <p>TURN May 13, 2011 Reply Comments to Proposed PD, Section C (indicating that disaggregation of PG&E’s other local areas would require LSEs to conduct separate procurements and possibly waivers for each local area, even for “trivial” amounts of capacity.)</p> <p>D.11-06-022 at 46: “Given the 2011 LCR study results of the ‘other PG&E’ areas, there still are a limited amount of resources in those areas. At this time there is still a need to keep the ‘other PG&E’ areas aggregated for market power concerns.”</p> <p>D.11-06-022 at 47: “We find that it is reasonable to permanently aggregate the “other PG&E” local areas for RA compliance purposes. The local area constraints in the “other PG&E” local areas have not changed since this aggregation was adopted; indicating market power mitigation is still needed.”</p>	<p>Yes</p>
--	---	------------

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

Claimant	CPUC Verified	
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Yes
b. Were there other parties to the proceeding?	Yes	Yes

<p>c. If so, provide name of other parties:</p> <p>CAISO, Alliance for Retail Energy Markets, Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC Dynegy Oakland, LLC, Southern California Edison Company, EnerNOC, Inc., Calpine Corporation, Pacific Gas and Electric Company, Cogeneration Association of California, GenOn California North, LLC, GenOn Delta, LLC, California Large Energy Consumers Association, San Diego Gas & Electric Company, Pilot Power Group, Inc., Independent Energy Producers Association, NRG Energy, Inc.</p>	<p>Correct</p>
<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>From the outset of this proceeding, TURN coordinated its coverage of issues with DRA to avoid duplication to the extent possible. The breadth and depth of technical issues afforded several opportunities for both and other parties to offer unique recommendations and perspectives. At the same time, where applicable and appropriate, TURN or DRA were able to signal support for the other party’s recommendation or position on a specific issue, thus obviating the need to devote additional time and resources on overlapping issues.</p>	<p>Correct</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION:

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

<p>Claimant’s explanation as to how the costs of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation</p>	<p>CPUC Verified</p>
<p>TURN’s advocacy reflected in D.11-06-022 addressed policy matters rather than specific rates or disputes over particular dollar amounts. As a result, TURN cannot easily identify precise monetary benefits to ratepayers from our work related to D.11-06-022, given the nature of the issues presented. While it is difficult to place a dollar value on Resource Adequacy issues, TURN submits that our participation resulted in improvements in the program that should result in reduced customer costs, as these improvements help protect ratepayers from assuming the costs of over-procurement and/or market power challenges that can drive up costs, and from costs associated with inadequate resource supply. In this case, these benefits far exceed the modest cost of TURN’s participation.</p>	<p>We agree that TURN’s hours and costs are reasonable and that its efforts resulted in benefits to customers, although difficult to quantify, that will outweigh the cost of TURN’s participation.</p>

B. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Ang	2010	60.75	280	D.11-06-012	17,010	2010	60.75	280	17,010
R. Finkelstein	2010	1.50	470	D.10-06-046	705	2010	1.50	470	705
Subtotal: \$17,715³						Subtotal: \$17,715			
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
K. Woodruff	2010	59.25	240	See Comment 2 Adopted here	14,220	2010	59.25	235	13,924
Subtotal: \$14,220						Subtotal: \$13,924			
INTERVENOR COMPENSATION CLAIM PREPARATION**									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Ang	2011	9.0	2011	½ D.11-06-012 rate	1,260	2011	9.0	2011	1,260
R. Finkelstein	2011	0.5	2011	½ D.10-06-046 rate	118	2011	0.5	2011	118
Subtotal: \$1,378						Subtotal: \$1,378			
COSTS									
Item					Amount \$	Amount \$			
Photocopies					14	14			
Postage					10	10			
Subtotal: \$24						Subtotal: \$24			
TOTAL REQUEST: \$33,337						TOTAL AWARD: \$33,041			

C. Comments Documenting Specific Claim:

Comment #	Description/Comment
Comment 1	<p>Allocation of TURN Attorney and Expert Hours by Issue/Activity Code: TURN has allocated all of our attorney and expert time by issue area or activity, as evident on our timesheets attached to this request for compensation.</p> <p>The following codes relate to specific substantive issue areas addressed by TURN: “GP” = General Participation; work that spans multiple issues and/or would not vary with the number of issues that TURN addresses. “LCR” = work devoted to analyses and research on the CAISO LCR study. “Ph2” = work related to Phase 2 issues noted in the February 3, 2011 Revised Scoping</p>

³ TURN makes a minor calculation error here. The correct total is \$17,715. We correct this error here and recalculate TURN’s request for an award.

	<p>Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding. Within this overall topic, TURN allocated work on the following issues (percentages reflect proportion of work and time dedicated to each issue):</p> <p style="padding-left: 40px;">Coincident Adjustment Factor (15%) Planned Outage Adder Proposal (25%) Local RA Price Waiver Trigger (25%) Monthly/Seasonal Local RA Requirement (15%) Aggregation of PG&E Local Areas (20%)</p> <p>“COMP” = work devoted to preparation of TURN’s request for compensation.</p>
<p>Comment 2</p>	<p>Reasonableness of TURN’s Hours and Expenses</p> <p><u>TURN Consultant Kevin Woodruff’s 2011 Rate</u></p> <p>This is the first request for compensation that includes a substantial amount of hours for Kevin Woodruff for work performed in 2011. The Commission had previously approved an hourly rate of \$225 for Mr. Woodruff’s work beginning in 2006 (see D.07-06-045). As of January 1, 2011, Mr. Woodruff increased his hourly rate from \$225 to \$240, an increase of approximately 7% as compared to the rate in place since 2006.</p> <p>Mr. Woodruff’s experience on energy-related matters spans more than two decades, (see Attachment 4) including fourteen years as a member of Henwood Energy services. Since 2002, Mr. Woodruff has operated as a sole practitioner offering expert witness and consultant services on a wide variety of energy matters.</p> <p>Because Mr. Woodruff did not change his billing rate from 2006 through 2010, TURN never had cause to seek any of the hourly rate increases made available under D.07-01-009 and D.08-04-010. Had Mr. Woodruff sought an increase in either 2007 or 2008, under those two decisions TURN could have justified a 3% cost of living adjustment (COLA) increase plus a 5% step increase in either of those years, and perhaps in both. An 8% increase would have resulted in a \$245 billing rate as early as 2007, and perhaps as high as \$265 in 2008. Of course, had Mr. Woodruff taken advantage of these opportunities, his increased rate would have applied to the substantial number of hours he worked in CPUC-related matters during 2007-2010. The Commission had previously approved an hourly rate of \$225 for Mr. Woodruff’s work beginning in 2006 (see D.07-06-045). As of January 1, 2011, Mr. Woodruff increased his hourly rate from \$225 to \$240, an increase of approximately 7% as compared to the rate in place since 2006.</p> <p>TURN is confident that the Commission will agree that that Mr. Woodruff’s decision to leave his 2006 authorized rate in place for five years and, in effect, to forego a number of annual increases he might otherwise have received under the Commission’s treatment of hourly rates in 2007 and 2008 is a sufficient basis to approve the requested hourly rate of \$240 for 2011. For that reason, TURN has opted to not provide the</p>

	comparison to peer rates for Mr. Woodruff’s work in 2011. While we are confident such a comparison would provide further support for the reasonableness of the requested rate, such a comparison requires additional time and resources that TURN hoped to avoid unnecessarily devoting to this request. However, should the Commission wish to consider such peer rates to confirm that they are comparable to the requested rate for Mr. Woodruff’s work in 2011. TURN asks that we be provided an opportunity to supplement this showing. TURN seeks no reimbursement for Woodruff’s expenses incurred for attending workshops and meetings.
Comment 3	<u>Marybelle Ang’s 2011 Rate</u> TURN seeks compensation for Ms. Ang’s work in preparing this request, all of which occurred in 2011, at the hourly rate requested by TURN for her work in 2010, reduced by 50%, per the Commission’s requirements. TURN reserves the right to seek a higher rate for Ms. Ang’s work in 2011 in another proceeding.
Comment 4	If the Commission has any questions regarding any of the time or expenses claimed for compensation by TURN in this request, or any other concerns regarding the content of this request, TURN respectfully asks that it be given an opportunity to answer any such questions prior to the issuance of a draft decision on this request.

D. CPUC Adoptions:

Item	Reason
2010 Kevin Woodruff hourly rates	The Commission has previously adopted an hourly rate of \$225 for Mr. Woodruff’s 2006-2010 work. Here, TURN requests an increase equal to 7% (\$240/hr) for Woodruff’s 2011 work. Page 8 of D.08-10-040 lists five circumstances where intervenor representatives (attorneys and experts) with an hourly rate previously adopted by the Commission would qualify for a rate increase. Here, the circumstance fully supported by the record is circumstance #2, where a step increase is limited to two annual increases of no more than 5% each year within any given level of experience for each individual. Resolution ALJ-267 disallowed cost-of-living increases for 2011 intervenor work. We apply a 5% step increase to Woodruff’s adopted 2010 hourly rate and round the resulting figure to the nearest \$5.00 increment, achieving a reasonable hourly rate of \$235. We adopt this rate for Woodruff’s 2011 rate.

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

1. The Utility Reform Network has made a substantial contribution to Decision (D.) 11-06-022.
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 \$33,041.

CONCLUSION OF LAW

1. The claim satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded \$33,041.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, as the largest three largest electric utilities, shall pay The Utility Reform Network the total award. Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company shall allocate payment responsibility among themselves based on their 2010 California-jurisdictional electric revenues, to reflect the year in which the proceeding 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 November 13, 2011, the 75th 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 decision is effective today.

Dated June 7, 2012, 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**

Compensation Decision:	D1206014	Modifies Decision? No
Contribution Decision:	D1106022	
Proceeding:	R0910032	
Author:	ALJ David M. Gamson	
Payees:	Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	08-30-11	\$33,337	\$33,041	No	adjusted hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marybelle	Eng	Attorney	The Utility Reform Network	\$280	2010/2011	\$280
Robert	Finkelstein	Attorney	The Utility Reform Network	\$470	2010/2011	\$470
Kevin	Woodruff	Expert	The Utility Reform Network	\$240	2010	\$235

(END OF APPENDIX)