

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
Proposing a Market Structure and Rules for the
Northern California Natural Gas Industry for the
Period Beginning January 1, 2003 as Required by
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011
(Filed October 8, 2001)

**OPINION AWARDING THE UTILITY REFORM NETWORK
INTERVENOR COMPENSATION FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 04-12-035**

1. Summary

This decision grants intervenor compensation to The Utility Reform Network (TURN) in the amount of \$8,390 for its substantial contribution to Decision (D.) 04-12-035.

2. Background

D.04-12-035 was issued as the result of two petitions for modification of D.03-12-061 filed by Pacific Gas and Electric Company (PG&E).¹ D.03-12-061, adopted a gas market structure for PG&E for 2004 and 2005 based on the Gas Accord structure previously adopted in D.97-08-055 (73 CPUC2d 754). PG&E's

¹ In D.04-05-048, we awarded TURN intervenor compensation for its contribution to D.02-08-070 and D.03-12-061.

petitions to modify sought to make various changes to the “Line 401 at-risk adjustment” that was adopted in D.03-12-061.²

In D.04-12-035, we modified D.03-12-061 by adding a new paragraph regarding the Line 401 at-risk adjustment that explained how this “adjustment could create a disincentive for PG&E to invest in the gas transmission infrastructure.” (D.04-12-035, p. 25.) This new paragraph was a hybrid of what TURN and PG&E had proposed in their respective response and reply to PG&E’s supplement to its second petition to modify D.03-12-061. (*See* D.04-12-035, pp. 3-25.)

3. Requirements for Award of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812,³ requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if the intervenor makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient Notice of Intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§1804(a).)

² The “Line 401 at-risk adjustment” refers to the adjustment of the load factor for Line 401 to reflect the risk that PG&E had agreed to undertake when Line 401 was built. (*See* D.03-12-061, pp. 283-293.)

³ All code section references are to the Public Utilities Code.

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§1806.)

For discussion purposes, the procedural issues in Items 1-4 above are combined and discussed below, followed by separate discussions of Items 5 and 6.

4. Procedural Issues

A prehearing conference (PHC) in this proceeding was held on January 7, 2002. TURN filed its NOI on February 6, 2002, within 30 days of the PHC. TURN made its showing of significant financial hardship in its NOI through a rebuttable presumption of eligibility pursuant to § 1804 (b)(1). No parties challenged this presumption. On March 1, 2002, Administrative Law Judge (ALJ) Wong ruled that TURN was a customer pursuant to §1802(b), that it met the financial hardship requirement, and that it was eligible to file for an award of compensation in accordance with § 1804(b)(1).

TURN filed its request for compensation on February 17, 2005, within the required 60 days of D.04-12-035. PG&E filed a response on March 4, 2005. PG&E

does not object to TURN's request for compensation and agrees that TURN's contribution was substantial.⁴

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment. We have stated:

“In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.” (D.98-04-059 [79 CPUC2d 628, 653].)

With this guidance in mind, we turn to the claimed contribution TURN made to D.04-12-035.

⁴ PG&E, however, expressed concern about TURN's statement in its request that D.04-12-035 did not grant the relief that PG&E had requested in either its first or second petition for modification. We note that Ordering Paragraph 1 of D.04-12-035 granted PG&E's second petition as set forth in sub-paragraphs a and b.

TURN is seeking compensation for its work relating to several pleadings that were filed in response to PG&E's petitions for modification of D.03-12-061. PG&E's petitions for modification sought to modify the language about the Line 401 at-risk adjustment.

In its first petition, PG&E requested that the at-risk adjustment not apply to the Line 401 expansion capacity that was installed in 2002. TURN's response to the first petition pointed out that TURN's testimony regarding the at-risk adjustment included the expansion capacity, and that PG&E had an opportunity to address this issue during the evidentiary hearings and in its comments to the proposed decision but failed to do so. (*See* D.04-12-035, pp. 4-7.)

PG&E's second petition to modify D.03-12-061 sought to eliminate the language in D.03-12-061 that endorsed the at-risk adjustment. TURN's response to the second petition provided reasons why the at-risk adjustment language should not be eliminated. (*See* D.04-12-035, pp. 9, 12-13.)

PG&E's supplement to the second petition sought to change the language in D.03-12-061 so that PG&E would have appropriate incentives to continue investing in the backbone transmission system, and to avoid prejudice to PG&E in future rate cases beginning in 2008. In response to PG&E's supplement, TURN proposed specific language be added clarifying how the at-risk adjustment would discourage future investment in expanding capacity. PG&E's reply favored the removal of all the language in D.03-12-061 that endorsed the at-risk adjustment and not to adopt TURN's proposed language. (*See* D.04-12-035, pp. 13-22.)

A review of D.04-12-035 and the related testimony and pleadings reveal that TURN's comments and proposals substantially assisted the Commission in the development of the additional language in D.04-12-035. In retaining the

Line 401 at-risk adjustment language, we stated that this “discussion in D.03-12-061 about the Line 401 at-risk adjustment helps to explain the development of how Line 401 has been treated for ratemaking purposes and how it applies to PG&E’s rates.” (D.04-12-035, pp. 24-25.) TURN had recommended in its response to the supplement that the “at-risk adjustment language should remain in D.03-12-061 because it explains the history and the reasons for adopting the adjustment.” (D.04-12-035, p. 19.) We went on to state that the paragraph added by D.04-12-035 “is a hybrid of what PG&E and TURN proposed in response to the Supplement, and which balances the competing interests.” (D.04-12-035, p. 25.)

Based on TURN’s activities relating to PG&E’s petitions for modification of D.03-12-061, and our discussion of TURN’s positions in D.04-12-035, we conclude that TURN made a substantial contribution to D.04-12-035.

6. Reasonableness of the Requested Compensation

Having determined that TURN made a substantial contribution to D.04-12-035, our next task is to determine whether the compensation that is being requested is reasonable.

TURN requests an award of \$8,390 for work performed in this part of the proceeding. This amount is composed of 27 hours of its attorneys’ time, which includes 6 hours related to its compensation request and which has been discounted by 50%. TURN submitted logs showing the time and a description of the work performed by TURN’s attorneys. No consulting costs or direct expenses were incurred or billed.

The components of TURN’s request must constitute reasonable fees of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees associated with the customer’s

work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through the customer's participation. Such a showing assists us in determining the overall reasonableness of the request.

TURN points out that its position regarding the Line 401 at-risk adjustment resulted in a backbone load factor of 77%, as compared to PG&E's proposed load factor of 68.4%. D.03-12-061 explained that the impact of a higher load factor is to lower rates. TURN estimates that the higher load factor adopted in this proceeding provides up to a \$23.6 million benefit to all of PG&E's customers, including core customers.

We find that TURN's participation was productive, and bears a reasonable relationship to the benefits ratepayers realized as compared to the amount of compensation that TURN is seeking in this request for compensation. (*See* D.04-05-048, pp. 19-20.)

Next, we must assess whether the hours that the customer claims, resulting in a substantial contribution to the Commission decision, were reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. TURN seeks an hourly rate for Attorney Michel Florio in 2004 of \$470, and an hourly rate for Attorney Marcel Hawiger in 2004 of \$270.⁵ The hourly rate adopted in 2003 for Florio and Hawiger was \$435 and \$250, respectively. TURN's hourly rates requested for work performed in 2004 reflect an 8% increase from the rates authorized in 2003, consistent with Resolution ALJ-184.

Since the 2003 hourly rates for Florio and Hawiger were previously approved by the Commission, we will allow their 2003 hourly rates to be escalated by 8% for 2004 as discussed in Resolution ALJ-184. Thus, the adopted hourly rate for Florio for work performed in 2004 shall be \$470, and the adopted hourly rate for Hawiger for work performed in 2004 shall be \$270. We find those hourly rates to be reasonable.

7. Award

We award TURN the full amount of its request, \$8,390. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

We remind TURN that Commission staff may audit its records related to this award and that TURN must make and retain adequate accounting records and other documentation to support all claims for intervenor compensation.

⁵ TURN has requested the same rates for work performed by Florio and Hawiger in 2004 in other Commission proceedings.

TURN's records should identify specific issues for which it requested compensation, the actual time spent by each person, the applicable hourly rate, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

Since this decision addresses an intervenor compensation matter, public review and comment on the draft decision is waived pursuant to § 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure (Rules).

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and John S. Wong is the assigned ALJ.

Findings of Fact

1. The March 1, 2002 ruling determined that TURN was eligible to file for an award of compensation in this proceeding.
2. TURN made a substantial contribution to D.04-12-035 as described in the text of this decision.
3. TURN's hourly rates for its attorneys for work performed in 2004 are reasonable.
4. The total of the reasonable compensation is \$8,390.

Conclusions of Law

1. TURN has fulfilled the requirements of §§1801-1812, which governs awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.04-09-022.
2. TURN should be awarded \$8,390 for its substantial contribution to D.04-12-035.

3. PG&E should be ordered to pay TURN \$8,390 plus any applicable interest for TURN's contributions to D.04-12-035.

4. Public review and comment on today's decision should be waived, and this order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$8,390 as compensation for its substantial contribution to Decision (D.) 04-12-035.

2. Pacific Gas and Electric Company (PG&E) shall, within 30 days of today's date, pay to TURN the amount of \$8,390.

3. 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 May 3, 2005 and continuing until full payment is made.

4. Public review and comment on today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0412035	
Proceeding(s):	A0110011	
Author:	ALJ Wong	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
The Utility Reform Network	2/17/05	\$8,390	\$8,390	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2004	\$270
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470