

Decision \_\_\_\_\_

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

Application of Southern California Edison Company (U338E) for Authorized Cost of Capital for Utility Operations for 2008.	Application 07-05-003 (Filed May 8, 2007)
And Related Matters.	Application 07-05-007 Application 07-05-008

**DECISION GRANTING INTERVENOR COMPENSATION TO  
AGLET CONSUMER ALLIANCE AND THE UTILITY REFORM NETWORK  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 08-05-035**

**1. Summary**

We award Aglet Consumer Alliance and The Utility Reform Network, jointly \$26,772 for their substantial contributions to Decision (D.) 08-05-035.<sup>1</sup>

**2. Background**

The subject costs of capital applications were filed by Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E). Pursuant to a June 14, 2007 prehearing conference (PHC), this consolidated proceeding was bifurcated. The first phase of this proceeding established authorized test year 2008 returns on equity (ROE) for SCE, SDG&E, and PG&E. By D.07-12-049, a test year 2008 ROE of 11.50% was adopted for SCE, 11.10% for PG&E, and 11.35% for PG&E. By

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<sup>1</sup> All amounts are rounded to the nearest dollar.

D.08-05-033, Aglet Consumer Alliance and The Utility Reform Network (referred to jointly as Aglet-TURN) were awarded \$102,373 for their substantial contribution to the first phase of this proceeding.

The second phase resolved by D.08-05-035 established a multi-year cost of capital mechanism for SCE, SDG&E, and PG&E. Although Aglet, TURN and The Utility Consumers' Action Network participated in this proceeding jointly only Aglet-TURN requests compensation for their substantial contribution to this phase of this proceeding, D.08-05-035.

The intervener compensation program, enacted pursuant to Pub. Util. Code §§ 1801-1812,<sup>2</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervener'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:

- a. 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 (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

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<sup>2</sup> All statutory references are to the Public Utilities Code.

- c. The intervenor must 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).)
- d. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
- e. 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, or as otherwise found by the Commission. (§§ 1802(i), 1803(a).)
- f. The claimed fees and costs must be reasonable (§ 801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive.

### **3. Procedural Requirements**

The first four of the above requirements are procedural and we address them below. The PHC in this matter was held on June 14, 2007. Aglet-TURN filed their joint notice of intent (NOI) timely on July 16, 2007. In their joint NOI, Aglet-TURN asserted financial hardship. On July 26, 2007, the assigned Administrative Law Judge (ALJ) ruled that Aglet-TURN are Category 3 customers, pursuant to § 1802(b)(1)(C), and satisfied the significant financial hardship condition through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1).

Aglet-TURN filed their joint request for compensation on June 19, 2008, within the required 60 days of D.08-05-035 being issued. We affirm the ALJ’s ruling and find that Aglet-TURN has satisfied all the procedural requirements necessary to make their joint request for compensation.

### **4. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission

adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer (§ 1802(i)). Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (§§ 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. 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.<sup>3</sup>

With this guidance in mind, we address Aglet-TURN's claimed contribution to the decision regarding a multi-year return on equity mechanism.

#### **4.1. Multi-Year Return on Equity Mechanism**

Aglet-TURN claimed a substantial contribution for its participation in proposing a multi-year return on equity mechanism. Although all parties did not agree on all features of a mechanism, the adopted mechanism is a consensus of the recommendations of the parties of which Aglet-TURN was the only party representing residential and small commercial customers' interests. Aglet-TURN

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<sup>3</sup> See D.98-04-059, 79 CPUC2d, 628 at 653.

prevailed on most details of the adopted mechanism: (1) a three-year cost of capital cycle; (2) retention of authorized capital structures throughout the cycle; (3) revisions to authorized capital structures throughout the cycle; (4) revisions to authorized costs of debt and preferred stock only in trigger years; (5) a 100 basis point deadband; (6) a 50% adjustment factor, and (7) a 12-month measurement period. (D.08-05-035, Ordering Paragraphs 1, 2, and 3.)

## **5. Reasonableness of Requested Compensation**

Aglet-TURN requests \$26,772 for their joint participation in this proceeding. 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 their participation. The issues we consider to determine reasonableness are discussed below.

### **5.1. Productivity**

The adopted multi-year cost of capital mechanism based on historical and forecasted interest rates make it difficult to establish how productive Aglet-TURN was in this proceeding. However, Aglet-TURN was able to quantify the most observable dollar benefit of their joint participation from a comparison of the adopted 100 basis point deadband recommended by Aglet-TURN and other parties to PG&E's recommended 75 basis point deadband.

For example, with utility bond rates continuing in an upward direction a 75 basis point deadband would trigger in 2009 or 2010 but would not trigger under a 100 basis point deadband. That is because the higher a deadband the less likely a deadband will activate a trigger requiring revenue requirement

changes. If the 75 basis point deadband triggered, SCE, SDG&E, and PG&E's return on equities would increase at least 37.5 basis points (one half of the minimum benchmark increase) and require approximately \$88 million increased revenue requirements for the combined SCE, SDG&E, and PG&E utilities.

The annual ratepayer revenue requirement benefit identified by Aglet-TURN substantiates that the costs of their joint participation in those issues which Aglet-TURN have been found to have substantially contributed are reasonable in relationship to the benefits ratepayers will realize through that participation.

## **5.2. Hours and Costs Related to and Necessary for Substantial Contribution**

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Aglet-TURN documented their claimed hours by presenting a daily breakdown of the hours, major activity, and description of work their attorneys and advocates devoted to multi-year cost of capital mechanisms.

The following tabulation summarizes the direct time Aglet-TURN spent by professionals for the years 2007 and 2008:

	<b>2007</b>	<b>2008</b>	<b>Total</b>
Weil	20.30 Hours	61.80 Hours	82.10 Hours
Goodson	.50 Hours	5.25 Hours	5.75 Hours
<b>Total</b>			<b>87.85 Hours</b>

Aglet-TURN believes that their total number of claimed direct hours is reasonable given the scope of this proceeding. We concur for two reasons. First, no party objected to Aglet-TURN's direct time compensation request. Second, our prior discussion of Aglet-TURN's substantial contribution and productivity substantiates that their requested time related to this phase of the proceeding is reasonable.

Aglet-TURN also spent 8.5 hours of indirect time preparing their joint compensation request, of which 7.5 hours was incurred by Weil and 1.0 hour by Goodson. Goodson's time was an estimate of time she would spend reviewing and editing the compensation pleading prepared by Weil prior to filing with the Commission.<sup>4</sup> Weil's time was time actually spent as detailed in his time sheet attached to the compensation request as Attachment A-2. No party objected to Aglet-TURN's time spent preparing its joint compensation request.

### **5.3. Market Rate Standard**

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Aglet-TURN seeks an hourly rate of \$280 for work performed by Weil in 2007 and \$300 for 2008, and half the 2008 rate for his preparation of the compensation request in 2008. Aglet-TURN also seeks an hourly rate of \$210 for Goodson in 2007 and 2008, and half that rate for compensation-related work in 2008.

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<sup>4</sup> Section 8.1 of Aglet-TURN compensation request.

The Commission has previously approved these rates for work performed in 2007 and 2008 by Weil and 2007 hourly rate for Goodson.<sup>5</sup> We find these rates reasonable and adopt them here.

#### **5.4. Direct Expenses**

Aglet-TURN seeks recovery of office costs incurred as a result of their participation in this proceeding. These costs totaling \$110 consist of reproduction (copy) and postage. Aglet-TURN adequately substantiated their costs and should be compensated for the full \$110.

#### **6. Award**

Aglet-TURN substantially assisted the Commission in this proceeding. Aglet-TURN are jointly entitled to compensation that totals \$26,772, as set forth in the table below:

<b>INTERVENOR</b>	<b>YEAR</b>	<b>HOURS</b>	<b>RATE</b>	<b>TOTAL AMOUNT<sup>6</sup></b>
Weil	2007	20.3	\$280	\$ 5,684
	2008	61.8	\$300	\$18,540
	2008	7.5	\$150	\$ 1,125
Goodson	2007	.5	\$210	\$ 105
	2008	5.25	\$210	\$ 1,103
	2008	1.0	\$105	\$ 105
Office Costs				\$ 110
<b>TOTAL</b>				<b>\$26,772</b>

<sup>5</sup> See D.07-05-037 for Weil's \$280 authorized hourly rate for his work in 2007; and D.08-05-033 for Weil's \$300 authorized hourly rate for his work in 2008; and D.07-12-026 for Goodson's \$210 authorized hourly rate.

<sup>6</sup> Amounts are rounded to the nearest dollar.

Consistent with previous Commission decisions, we will 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 on September 2, 2008, the first business day after the 75th day after Aglet-TURN filed their joint compensation request and continuing until full payment of the award is made.

We remind Aglet-TURN that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet-TURN's records should identify specific issues for which they requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

## **7. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

## **8. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. Aglet-TURN has satisfied all of the procedural requirements necessary to claim compensation in this proceeding.
2. Aglet-TURN made a substantial contribution to D.08-05-035, as described herein.

3. Aglet-TURN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. Aglet-TURN requested related expenses that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$26,772.00.

6. The appendix to this decision summarizes today's award.

**Conclusions of Law**

1. Aglet-TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contribution to D.08-05-035.

2. Aglet-TURN should be awarded \$26,772.00 for its contribution to D.08-05-035

3. This order should be effective today so that Aglet-TURN may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) are jointly awarded \$26,772.00 as compensation for their substantial contributions to Decision 08-05-033.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E), shall pay Aglet \$26,772 in proportion to their respective 2007 jurisdictional electric and gas revenues. SCE, SDG&E,

and PG&E shall pay their full shares of the award to Aglet, and Aglet shall disburse the portions between Aglet and TURN as appropriate. SCE, SDG&E, and PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15 commencing September 2, 2008 and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This consolidated proceeding remains open to address a Rule 13.1 violation.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX**

<b>Compensation Decision:</b>	
<b>Contribution Decision(s):</b>	D0805035
<b>Proceeding(s):</b>	A0705003, A0705007, and A0705008
<b>Author:</b>	ALJ Galvin
<b>Payer(s):</b>	Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company

**Intervener Information**

<b>Intervener</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Aglet Consumer Alliance and The Utility Reform Network	6/19/2008	\$26,772.00	\$26,772.00	No	

**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>
James	Weil	Advocate	Aglet	\$280	2007	\$280
				\$300	2008	\$300
Hayley	Goodson	Attorney	The Utility Reform Network	\$210	2007	\$210

**(END OF APPENDIX)**