Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY for Authority Pursuant to Public Utilities Code Section 851 to Sell its Storage Field in Montebello, California.	Application 00-04-031 (Filed April 20, 2000)

OPINION AWARDING INTERVENOR COMPENSATION TO TURN FOR SUBSTANTIAL CONTRIBUTION TO DECISION 01-06-081

This decision grants The Utility Reform Network (TURN) $9,521.09 for its substantial contribution to Decision (D.) 01-06-081. TURN has properly documented its request for compensation for all hours claimed by its attorneys and for other, miscellaneous costs; TURN's request is unopposed, and we make no adjustments. However, we correct an inadvertent clerical error and make a minor reduction to the hourly rate sought for one of TURN's attorneys, authorizing the highest rate approved to date, rather than an increase--since that issue is under review in another proceeding.

1. Background

By Application (A.) 00-04-031, the Southern California Gas Company (SoCalGas) sought authority to dispose of all of the assets which comprise its West Montebello natural gas storage field (Montebello). D.01-06-081 approved, with minor conditions, the amended all-party settlement (Amended Settlement) filed in this proceeding. The Amended Settlement proposed a plan to resolve all issues, including a mechanism for disposal of Montebello and the ratemaking

treatment associated with that action. TURN seeks compensation for its contribution to D.01-06-081.

A.00-04-031 was the successor to A.98-01-015, which the Commission dismissed without prejudice after opening Investigation (I.) 99-04-022, a proceeding to examine the accuracy of information SoCalGas had supplied the Commission about Montebello, including Montebello's current and future usefulness to the utility and its ratepayers. At the time we dismissed A.98-01-015, that proceeding had been submitted on the briefs following evidentiary hearing. We subsequently incorporated the record developed there in the record of this proceeding.

2. Requirement for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.[1] Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.[2] It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting

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[1] All statutory citations are to the Public Utilities Code.

[2] To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (*See* D.88-12-034, D.92-04-051, and

Footnote continued on next page

compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> "in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

After review of the NOI filed by TURN in this proceeding, Administrative Law Judge Vieth found TURN eligible to file for intervenor compensation by ruling dated December 18, 2000. TURN made a showing of significant financial hardship in its NOI.

D.96-09-040.) In today's decision, "customer" and "intervenor" are used interchangeably.

4. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. While D.01-06-081 issued on June 28, 2001, the decision was not mailed until July 3. Sixty days thereafter is September 4, 2001, the filing date of TURNS's request and therefore, TURN has filed a timely request for an award of compensation.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.[3] A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.[4] Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.[5]

As TURN notes, Rule 51.9 of the Commission's Rules of Practice and Procedure precludes disclosure of settlement discussions, and the Amended

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[3] Section 1802(h).

[4] The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

[5] *See* D.98-04-0590, *mimeo* at 41.

Settlement adopted by D.01-06-081 was a negotiated compromise. However, TURN's positions are reflected in filings made in the dockets related to this proceeding, A.98-01-015 and I.99-04-022, as well as in filings TURN made here (*e.g.* protest; prehearing conference statement; response to the Assigned Commissioner's Ruling (ACR) requesting parties' comments on the Amended Settlement).[6] D.01-06-081 cites TURN's input approvingly in several places and expressly commends TURN's ACR response as having informed the decision-making process.

Our independent assessment confirms TURN's representations that its participation successfully advanced ratepayer interests on each of the three main issues resolved in the Amended Settlement – the apportionment of gain on sale, treatment of the impact of income taxes, and the date of removal from ratebase of the costs associated with Montebello. The Amended Settlement approved in D.01-06-081 adopted TURN's proposals in whole or in part and we agree that TURN made a substantial contribution to the decision.

6. Reasonableness of Requested Compensation

TURN requests $9,783.59[7] as follows:

Attorneys' Fees		
Michel Florio	3.75 hrs. @ $310	$1,162.50
	10.75 hrs. @ $350	$2,625.00
Marcel Hawiger	19.53 hrs. @ $180	$3,515.40
	12.35 hrs. @ $190	$2,346.50

[6] TURN did not seek intervenor compensation for its participation in either A.98-01-015 or I.99-04-022.

[7] TURN erroneously totals its request at $9,782.69. The $0.90 disparity results because TURN inadvertently transposes two digits and shows the subtotal for 19.53 hours of Hawiger's time at $180 per hour to be $3,514.50, rather than $3,515.40.

Atty. Fees Subtotal	$9,649.40
Other Costs	
Photocopying	$120.00
Postage	$ 12.33
Telephone/FAX	$ 1.06
Costs Subtotal	$134.19
TOTAL:	**$9,783.59**

6.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

With respect to this proceeding, though TURN joined ORA in representing the interests of residential and small business customers, TURN's filings articulated concerns generally discrete from ORA. TURN states that telephone discussions with ORA regarding positions and tactics enabled it to limit overlap. TURN also minimized issue development costs by building on the positions it took in A.98-01-015 and I.99-04-022.

As TURN points out, the ratepayer benefits of the Amended Settlement can be quantified readily. The removal of Montebello from rate base on September 1, 2001, rather than on January 1, 2003, provides a total revenue

requirement reduction of $18.8 million, and most of that benefit accrues to core customers. In addition, the Amended Settlement provides for an up-front reduction of $30 million based on a forecast of the ratepayer portion of the gain on sale of natural gas withdrawn from Montebello. (As TURN notes, this amount is subject to true up to reflect the actual sales price.)

All of these factors lead us to conclude that TURN's participation was productive, avoided unreasonable duplication with other parties, and yielded ratepayer benefits substantially in excess of the costs TURN incurred.

6.2 Hours Claimed

TURN submits time logs to document the hours claimed by its attorneys. The logs include a daily breakdown of hours, briefly describe the work performed, and assign the work among major tasks/issues. TURN includes 3.25 hours at $310 per hour for work Florio undertook in A.98-01-015, the first SoCalGas Montebello application. TURN did not claim intervenor compensation in A.98-01-015. We dismissed that proceeding without prejudice and subsequently incorporated the record developed there in the record of this proceeding. Considering these circumstances, we conclude compensation for these 3.25 hours is warranted. TURN has not sought intervenor compensation for its participation in I.99-04-022 previously and does not seek it here.

Finally, TURN's documents that (consistent with D.98-04-059) it has reduced by 50% all attorney time devoted to compensation activities, and TURN does not bill for any travel time. We conclude that TURN has adequately and reasonably supported the total hours for which it claims compensation. This modest total, which represents less than 50 hours, underscores TURN's efficient and highly productive resource allocation in this proceeding.

6.3 Hourly Rates

TURN requests hourly rates for Florio of $310 for work performed during 1999-2000 and $350 for work during 2000-2001. As TURN notes, we adopted $310 per hour for Florio in D.00-10-020. The highest rate we have approved for him to date is $315, for work performed in 2000. TURN states that its intervenor compensation request in A.00-11-038 asks for an increase in Florio's rate to $350, but TURN has not replicated the supporting documentation and argument here. TURN's A.00-11-038 request, for an award of over half a million dollars, is still under review. Rather than delay a decision on this much smaller intervenor compensation request by asking TURN to supplement its showing in this proceeding, or by waiting until a decision issues in A.00-11-038, we will award Florio $315 per hour for work performed during the 2000-2001 timeframe. This determination does not prejudge the issue raised in A.00-11-038. Thus, our total award will reflect an adjustment for attorney time to authorize 7.50 hours for Florio at $315 per hour, for a total of $2,362.50, or $262.50 less than the amount requested.

TURN requests compensation for Hawiger at rates we have adopted previously: $180 per hour for 2000 (D.01-03-030) and $190 per hour for 2001 (D.01-10-008). We use those rates here.

6.4 Other Costs

TURN's expenses include nominal sums for photocopying, postage, and telephone/FAX charges. TURN has included detailed supporting documentation. We find these expenses are reasonable.

7. Award to TURN

We award TURN $9,521.09, or $9,783.59 less $262.50, which represents a minor adjustment for Florio's hourly rate during 2000-2001, as discussed above.

8. Payment of Awards

SDG&E shall pay TURN $9,521.09 for TURN's contribution to D.01-06-081. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate) measured from the 75th day after TURN's compensation request was filed.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records should identify specific issues for which TURN requests compensation, the actual time spent by each employee, the applicable hourly rate and any other costs for which compensation may be claimed.

9. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.01-06-081.
2. TURN contributed substantially to D.01-06-081.
3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.
4. TURN has requested hourly rates for attorneys Michel Florio (for 1999-2000) and Marcel Hawiger (for 1999, 2000, and 2001) that already have been approved by the Commission.

5. We lack the support, in this proceeding, which would permit us to assess TURN's request that we establish a rate of $350 per hour for Florio for 2000-2001. That support, filed with TURN's request for intervenor compensation in A.00-11-038, is still under review.

6. Under the circumstances, it is reasonable to award Florio $315 per hour for work performed during 2000-2001, since this is the highest hourly rate we have approved for him. It would not be reasonable to delay a decision on this intervenor compensation request by asking TURN to supplement its showing in this proceeding or by waiting until a decision issues in A.00-11-038.

7. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded $9,521.09 for its contribution to D.01-06-081.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

5. Our determination to award Florio $315 per hour for work during 2000-2001, does not prejudge TURN's request in A.00-11-038 for an increase in his hourly rate to $350 per hour.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $9,521.09 in compensation for its substantial contribution to Decision 01-06-081.

2. Southern California Gas Company (SoCalGas) shall pay TURN the award granted by Ordering Paragraph 1. Payment shall be made within 30 days of the effective date of this order. SoCalGas shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning with the 75th day after September 4, 2001, the date TURN's request was filed.

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

4. Application 00-04-031 is closed.

This order is effective today.

Dated _____, at San Francisco, California.