Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval and Recovery of Costs Associated with its Fuel Cell Project. (U39E)	Application 09-02-013 (Filed February 20, 2009)
And Related Matter.	Application 09-04-018

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-04-028

Claimant: The Utility Reform Network (TURN)	**For contribution to D.10-04-028**
Claimed: $39,121.41	**Awarded: $33,388.41 (reduced 15%)**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: Dorothy Duda**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: The Decision approves, with modifications, the applications of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) for approval of each utility's Fuel Cell Project to install utility-owned fuel cells on several University of California and California State University campuses, as long as the projects are modified in two respects. First, PG&E and SCE shall each reduce their project capital costs to reflect a lower contingency percentage. Second, PG&E shall remove contingency costs and education and outreach labor costs from its estimated non-fuel operations and maintenance costs (O&M).

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	April 27, 2009	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	May 27, 2009	Yes
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:	A.07-12-021	Yes
6. Date of ALJ ruling:	April 18, 2008	Yes
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:	A.07-12-021	Yes
10. Date of ALJ ruling:	April 18, 2008	Yes
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.10-04-028	Yes
14. Date of Issuance of Final Decision:	April 14, 2010	Yes
15. File date of compensation request:	June 14, 2010	Yes
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
B 7 and 11	X		TURN timely filed an NOI on May 27, 2009. Since the ALJ did not issue a Ruling on the NOI, TURN hereby requests that the Commission, based on the information submitted in the NOI, issue a finding in the decision on the compensation request that TURN is a customer, has met the requirements for significant financial hardship and is eligible for compensation in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. TURN recommended a lower contingency factor of at most 5% for capital costs and 10-15% for installation costs. TURN Direct Testimony, Sec. 4.1 The Commission agreed with TURN's analysis and adopted a contingency rate (5-10%) within TURN's recommended range.	Decision, p. 17-19 "We agree with TURN that approval of large contingencies for capital costs sends an improper incentive to the utilities and vendors that they can enhance the project scope within the limits of the contingencies." "We provide the final capital cost number adopted for each utility, which incorporates a substantial reduction in the proposed contingency rates. For PG&E, we adopt reduced total project capital costs of $20.3 million and for SCE; we adopt reduced total project capital costs of $19.1 million. Both of these reduced capital cost figures include a new, lower contingency factor." FOF 11, 12 COL 5, 6, 7	Yes
2. TURN recommended eliminating $80,000 per year in fixed O&M costs for PG&E for an education and outreach specialist. TURN Direct Testimony, Sec. 4.2	Decision, p. 19-20 ("We agree with TURN that these types of community education and outreach are not properly funded by ratepayers and we direct PG&E to remove all education and outreach labor costs from its O&M costs for its Fuel Cell Project.") FOF 13 COL 9	Yes
3. TURN recommended that SCE claim the ITC tax credit and allocate a portion of the tax benefits to ratepayers. SCE agreed in its rebuttal testimony that it will claim the ITC.	This issue is not discussed in the final decision since SCE agreed to TURN's recommendation in its rebuttal, and thus it was not an issue in dispute.	Yes

TURN Direct Testimony, Sec. 6		
4. Reasonableness of Program. TURN argued that the program was not reasonable and did not support statutory directives, which favored use of the SGIP incentive program for private fuel installations. TURN Opening Brief, Sec. 2	The Decision agrees that TURN's arguments regarding cost are correct but authorizes the projects because they "can help advance industry learning and maturation of fuel cell technologies." (p. 13) The ALJ Proposed Decision fully agreed with TURN and DRA that the proposed projects were not reasonable for various reasons advanced by TURN and DRA. ALJ PD, p. 14-20; COL 1-3	Although TURN did not prevail on this issue, we agree that they clearly influenced the Commission's decision making process.
5. TURN recommended that the electric-only installations be eliminated based on cost and greenhouse gas (GHG) emissions.	The Decision authorizes the projects because "it will be worthwhile for utilities and students to study the attributes of these plants alongside the other fuel cell technologies, as well as to provide important support for an emerging technology." (p. 20) The ALJ PD agreed with TURN that the cost of the electric-only installations were unreasonable compared to benefits. ALJ PD, p. 14; FOF 2-3	We agree that although the Decision did not disallow the electric-only projects, that TURN's work here clearly influenced the Commission's decision making process in "whole or in part" as defined in Section 1802.
6. TURN recommended that, if the projects are approved, the lease contract should be modified to allocate the value of any future avoided GHG emissions credits to ratepayers.	The Decision rejects this recommendation. Decision, p. 21-22	TURN did not make a substantial contribution to the Decision on this issue. The Decision states that "[W]e will not require PG&E and SCE to renegotiate their contracts with the campuses to obtain value for potential future

		GHG emission offsets because it is highly doubtful that the waste heat itself will ever create a GHG emissions offset that can be sold into a GHG compliance market. Rather, the waste heat would more likely be classified as an emissions reduction within the emissions regime. Thus, we find that any future value of potential offsets is highly speculative and most likely minimal."[1] *See* disallowances outlined in Part III, Section D.
7. TURN recommended that the utilities use excess SGIP funds to pay for the capital costs.	The Decision rejected the use of SGIP funds for utility projects.	TURN did not make a substantial contribution to the Decision on this issue. The Decision states "While we agree that the notion of distributed generation in general has evolved to

[1] *See* D.10-04-028 at 23.

		include wholesale applications, we do not believe this change allows for repurposing of SGIP monies to support utility owned projects as TURN suggests. The enabling legislation and prior Commission decisions are clear that SGIP is fundamentally an incentive program to support the installation of eligible technologies on the customer side of the meter. Although the proposed projects clearly supplement SGIP by supporting SGIP eligible technology, that fact alone does not mean that we can use SGIP monies for these utility owned projects."[2] The

[2] *See* D.10-04-028 at 32-33.
[3] *Ibid.*, at 33.

		Decision concludes that "we will not depart from out prior policy of prohibiting utilities from receiving SGIP incentive funds for their own projects."[3] *See* disallowances outlined in Part III, Section D.

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

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding?	Yes	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: Division of Ratepayer Advocates (DRA), FuelCell Energy Inc, California Municipal Utilities Association, Modesto Irrigation District, Alliance for Energy Markets, Direct Access Customer Coalition, Energy Producers and Users Coalition, Western Power Trading Forum, Bloom Energy Corporation, SoCal Gas Company, The Utility Reform Network, Pacific Gas and Electric Company, and Southern California Edison Company.		Yes
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: In this proceeding TURN coordinated closely with DRA to allocate issues and minimize duplication. Thus, TURN focused on certain capital cost issues, tax credit issues and lease term issues. DRA focused on other cost issues and the alleged educational value of the projects. TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. In a proceeding involving multiple participants, it is virtually impossible for TURN to completely avoid some duplication of the work of other parties. In this case, TURN took all reasonable steps to keep such duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties.		Yes

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
1	Contribution to Proposed Decision		The Commission has repeatedly held that an intervenor's contribution to a final decision may be supported by contributions to a proposed decision, even where the Commission's final decision does not adopt the proposed decision's position on a particular issue. See, for example, D.92-08-030, at 4; D.96-08-023, at 4; D.96-09-024, at 19; D.99-11-006, at 9-10 (citing D.99-04-004 and D.96-08-023); D.01-06-063, at 6-7. In this proceeding, the Proposed Decision of ALJ Duda agreed with TURN's primary recommendation that the proposed projects be rejected on grounds of excessive costs compared to environmental and financial benefits.
2	Partial Contribution		The Commission has interpreted the Section 1802 definition, in conjunction with Section 1801.3, so as to effectuate the legislature's intent to encourage effective and efficient intervenor participation. The statutory provision of "in whole or in part," as interpreted by multiple Commission decisions on intervenor compensation requests, has established as a general proposition that when a party makes a substantial contribution in a multi-issue proceeding, it is entitled to compensation for time and expenses even if it does not prevail on some of the issues. See, for example, D.98-04-028 (awarding TURN full compensation in CTC proceeding, even though TURN did not prevail on all issues); D.98-08-016, at 6 and 12 (awarding TURN full compensation in SoCalGas PBR proceeding); D.00-02-008, at 4-7 and 10 (awarding TURN full compensation even though we unsuccessfully opposed settlement). In this proceeding, the only recommendation made by TURN that was not adopted in either the PD or final Decision was the recommendation to use SGIP funds for cost recovery. TURN's recommendation concerning the GHG emissions credit was rejected in the Decision, and the ALJ PD found that it need not address this issue since it rejected the applications. (PD, p. 21). TURN submits that taken as a whole, TURN's contributions to the PD and the Decision were substantial enough to satisfy the "in whole or in part" statutory language. Not prevailing on two issues (SGIP and GHG credits) is not grounds for reducing our compensation in this proceeding.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation.	CPUC Verified
The changes and modifications due to TURN's recommendations will result in savings to ratepayers of just about $1 million per year over the ten-year project life. TURN calculated that our contingency proposal would reduce capital costs by about $4 million. The utilities' proposed capital costs were $43.1 million (21.5+21.6). The Commission did not disclose the confidential adopted contingency rate but indicated it was in the 5-10% range as proposed by TURN. The resulting approved capital costs were $39.4 million. (20.3 + 19.1), a savings of just under $4 million. This would very roughly translate to total savings (including return and depreciation) of about $6 million over the life of the project. TURN calculated (based on SCE data responses) that claiming the ITC tax credit (SCE) would reduce tax expenses by about $1.7 million over the first five years of the project. The benefit to ratepayers will depend on final costs. The elimination of the education and outreach specialist results in an annual expense savings of about $80,000.	After the disallowances we make to this claim, the remainder of TURN's hours and costs are reasonable and should be compensated.

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
M. Hawiger	2010	24.75	325	Adopted here, based on ALJ 247	8,043.75	2010	24.75	325	8,043.75
M. Hawiger	2009	91.50	325	D.10-02-030	29,737.50	2009	73.86	325	24,004.50
R. Finkelstein	2010	.50	470	D.10-06-046	235.00	2010	.50	470	235.00
M. Florio	2009	.50	535	D.09-08-025	267.50	2009	.50	535	267.50
					***Subtotal:* $38,283.75**				***Subtotal:* $32,550.75**

INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate $	Basis for Rate*	Total $	Year	Hours	Rate $	Total $
M. Hawiger	2009	.50	162.5	D.10-02-030	81.25	2009	.50	162.5	81.25
M. Hawiger	2010	4.50	162.5	½ of rate adopted here	731.25	2010	4.50	162.5	731.25
					***Subtotal:* $812.50**				***Subtotal:* $812.50**

COSTS				
#	Item	Detail	Amount $	Amount $
1	Xeroxing	Photocopies for pleadings not emailed	23.40	23.40
2	Postage		1.76	1.76
			***Subtotal:* $25.16**	***Subtotal:* $25.16**
			TOTAL REQUEST: $39,121.41	**TOTAL AWARD: $33,388.41**

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

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.

C. Comments Documenting Specific Claim:

Comment #	Description/Comment
Comment: Expert Fees	In this proceeding, TURN's staff attorney Marcel Hawiger submitted testimony as an expert witness on behalf of TURN.
Comment: Hourly Rate for Hawiger for 2010	The Commission has not authorized an hourly rate for Mr. Hawiger for 2010. In this proceeding TURN requests authorization to use the 2009 hourly rate for Hawiger's work in 2010; however, TURN reserves the right to request different hourly attorney rates for 2010 in subsequent compensation requests.
Comment: Time Keeping	A daily listing of the specific tasks performed by TURN's attorneys in connection with this proceeding is set forth in Attachment 2. TURN's attorneys maintained detailed contemporaneous time records indicating the number of hours devoted to work on this case. In preparing this Attachment, Mr. Hawiger reviewed all of the recorded hours devoted to this proceeding and included only those that were reasonable for the underlying task.

Comment: Allocation of Time by Issue	TURN typically allocates its work activities on an issue-by-issue basis in its compensation requests. TURN used the following codes in Attachment 2 to identify the issues in this proceeding: "Cost" – cost of all projects, cost of electric-only projects CR – cost recovery – use of SGIP funds Policy - statutory authority for utility owned generation (UOG) fuel cell projects Tax – issues related to the ITC Lease – issues related to waste heat and emissions credit value Disc – discovery work that is not issue-specific GP – general participation work necessary for participation in CPUC proceedings (e.g., reading rulings, reading proposed decisions, reading other pleadings); work that often spans multiple issues and/or would not vary with the number of issues addressed by TURN # – multi issue work difficult to segregate Comp – work related to the NOI and the compensation request (billed at ½ the normal hourly rate) EH and GH - evidentiary hearings and prehearing conferences EP – ex-parte TURN's time in this proceeding was spent primarily on issues falling within the "cost," "policy" and "CR" categories. TURN submits that all of the hours claimed were reasonably and efficiently expended and should be fully compensated.

D. CPUC Adoptions and Disallowances:

#	Reason
2010 - Hawiger hourly rates	ALJ 247 disallows COLA increases for 2010 intervenor work. As such, we apply Hawiger's previously adopted 2009 rate to his work here.
2009 - Hawiger hours	We disallow 2.17 hrs of Hawiger's approximate time[4] spent on "lease" (issues related to waste heat and emissions credit value) issues. TURN did not make a substantial contribution to the Decision on this issue. *See* Part II; Section A, Item #6.
2009 - Hawiger hours	We disallow 13.33 hrs of Hawiger's approximate time spent on "CR" (cost-recovery) issues. TURN did not make a substantial contribution to the Decision on this issue. *See* Part II; Section A, Item #7.

[4] Where TURN has combined work on several issues on its timesheet, we have elected to approximate the amount of time spent on each individual issue by dividing the total time by the number of issues listed.

2009 - Hawiger hours	Proportionate to the hours we disallow above (7.5%), we disallow 2.14 hrs of Hawiger's time spent on issues TURN labels under the category of "#." TURN defines this time as time spent on multiple issues which is difficult to segregate.

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(2)(6))?	Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.10-04-028.

2. The claimed fees and costs, as adjusted herein, 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 $33,388.41.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Claimant is awarded $33,388.41.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company and Southern California Edison Company shall each pay claimant one-half the total award. 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 28, 2010, 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. Application (A.) 09-02-013 and A.09-04-018 are closed.

5. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision(s):	D1004028	
Proceeding(s):	A0902013 and A0904018	
Author:	ALJ Dorothy Duda	
Payer(s):	Pacific Gas and Electric Company and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	6-14-10	$39,121.40	$33,388.41	No	lack of substantial contribution

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	$325	2009	$325
Marcel	Hawiger	Attorney	The Utility Reform Network	$325	2010	$325
Michel	Florio	Attorney	The Utility Reform Network	$535	2009	$535
Robert	Finkelstein	Attorney	The Utility Reform Network	$470	2010	$470

(END OF APPENDIX)