Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) $574,584.45 in compensation for its contribution to Decision (D.) 01-01-018, D.01-03-029, D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

1. Background

TURN's compensation request is large, but we note that the request (which is unopposed) covers contributions to many decisions at the heart of the current energy crisis. In these decisions, adopted during different phases of the proceeding, the Commission addressed the requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) for

immediate rate increases in response to extraordinary circumstances in California's wholesale power markets. The first phase concluded with an increase in rates for PG&E and Edison customers of one-cent per kilowatt-hour (kWh) in D.01-01-018. Prior to D.01-01-018, the Commission issued D.00-12-067, which consolidated the above-captioned applications and a petition (docketed as Application (A.) 00-10-028) filed by TURN as one proceeding with different phases.

D.01-03-082, issued in the second phase, is an interim opinion granting PG&E and Edison authority to increase rates by an additional three-cents per kWh over those rates adopted in D.01-01-018. In this second phase five issues were considered:

a. Review of the independent audits of PG&E and Edison, and determination of whether or not the Commission should grant further rate increases.
b. TURN's accounting proposal to reconcile various balancing and memorandum accounts.
c. Consideration of whether the rate freeze under Assembly Bill (AB) 1890 has ended on a prospective basis.
d. Greenlining/Latino Issues Forum's California Alternative Rates for Energy (CARE) proposal.
e. Parties' proposals for tiered residential rates.

D.01-03-082 concluded that the utilities were experiencing serious financial shortfalls in revenues necessary to provide adequate electric service to their customers. That decision also adopted changes in accounting rules proposed by TURN, which recognize amounts utilities realized both on their sales of capital assets and in revenues from selling electricity generated by their own plants. D.01-03-082 also exempted low-income customers from the rate increase while

stating that the rate freeze under AB 1890 has not ended, and provided opportunity for parties to comment on a tiered residential rate proposal.

The third phase of these consolidated proceedings resulted in D.01-03-081 and D.01-04-005. These decisions address the issues of implementing AB 1X, signed into law February 1, 2001, and codified in Section 360.5.[1] That statute authorizes the California Department of Water Resources (DWR) to purchase electric power for sale directly to retail end-use customers served by utilities, and establishes the California Procurement Adjustment (CPA) which sets the amount of the utility retail rate which is transferred to DWR to pay for power purchases. D.01-03-081 requires utilities to provide DWR with monies collected for power paid for by DWR, sets out the proposed method to calculate the CPA, calculates for each utility a proposed CPA rate, and implements Section 360.5. D.01-04-005 applies the CPA rate to determine CPA revenue used by the DWR in the process of issuing bonds and addresses comments of parties on the CPA methodology proposed in D.01-03-081.

In the fourth phase, D.01-05-064 allocated the three-cents per kWh authorized in D.01-03-082 to customer classes. The Commission adopted five tiers for residential usage, excluding CARE and medical baseline customers. All shortfalls in revenue were allocated to non-exempt sales for residential usage above 130% of baseline amounts, and to commercial and industrial customers. Agricultural customers were limited to increases of 15% to 20% depending on their tariff schedule.

TURN timely filed its compensation request on July 16, 2001. No party filed a response to the request.

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

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests pursuant to Sections 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's[2] planned participation and an itemized estimate of the compensation the customer expects to request. Here, TURN timely filed its NOI after the first prehearing conference.

The customer, either at the NOI stage or later, must also show that the costs of effective participation, if not compensated, would constitute a "significant financial hardship" (as defined by Section 1802(g)) for the customer. Regarding TURN, we had made a recent finding of significant hardship by ruling on December 29, 2000 in another proceeding (A.00-09-002). This recent finding, pursuant to Section 1804(b)(1), creates a rebuttable presumption of TURN's eligibility for compensation in other Commission proceedings, such as the consolidated proceedings here, that start within a year of the finding. No one has challenged this presumption, so we find that TURN continues to be eligible under the statute and prior ruling.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to

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[2] To be eligible for compensation, an intervenor must be a "customer" as defined by Section 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 D.96-09-040.) In today's decision, as in the statute, the terms "customer" and "intervenor" are used interchangeably.

file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. TURN timely filed its request for an award of compensation on July 16, 2001. Under Section 1804(c), an intervenor requesting 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 Section 1806.

3. Substantial Contribution to Resolution of Issues

Under Section 1802(h), 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 Administrative Law Judge or Commission adopted. 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.[3]

3.1 Contribution to D.01-03-082

TURN's contribution here was multi-faceted. TURN proposed changes to accounting rules we had adopted in Resolution E-3527 when TURN determined that those rules were leading to results that were inconsistent with the "rate freeze" principle embodied in AB 1890. TURN explained that it filed a petition to modify the Resolution, and the petition was subsequently consolidated with the Rate Stabilization docket. The Commission issued D.01-03-082 in which it adopted TURN's proposed accounting changes across the board.

TURN also pursued the accounting issues in federal court litigation initiated by the utilities. The utilities argued that the filed rate doctrine prevented the Commission from interfering with utilities raising rates to collect increased wholesale procurement costs. TURN contended that its knowledge of the accounting rules, and the unintended results, enabled it to argue successfully to the court that the result sought by the utilities would preclude the

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[3] The Commission has provided compensation even when the position advanced by the intervenor is rejected. See 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). See also D.89-09-103 (modifying D.89-03-063) where we hold that in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.

Commission from fully considering the proposed corrections to the accounting rules. TURN concluded that absent its participation in the federal court litigation, the Commission would have been prevented from addressing the merits of the proposed accounting changes.

In D.01-03-082, the Commission also granted the utilities a rate increase of three cents/kWh, despite TURN's objections. TURN points out, however, that the Commission also imposed a significant limitation on the use of the funds collected, namely, that the funds could only be used for power costs incurred after the effective date of the decision.

We conclude that TURN, through its filings and petition consolidated with the applications in this docket, made a substantial contribution to D.01-03-082.

TURN's work in the federal courts, however, requires a more detailed analysis. In addition to making a "substantial contribution to the adoption, in whole or in part, of the commission's order or decision," Section 1803 also requires the intervenor to have incurred the expenses in activities in a Commission "proceeding." That section allows the Commission to award "reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding . . ." "Proceeding" is defined in § 1802(f) as: "an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission." Thus, a narrow reading of the statute would preclude an award of compensation under the statute for work performed in a non-Commission forum, such as federal court. For reasons we discuss below, such a reading is not appropriate in these circumstances.

TURN stated that its work before the federal courts was necessary to promote the interests of consumers by ensuring that the rate freeze was administered as intended by the Commission, rather than as the utilities sought in their federal court complaints. The utilities asked the federal court to order the Commission to immediately issue a decision passing through to ratepayers the cost of wholesale power procurement. This outcome would have prevented the Commission from ever reaching the issues raised by TURN in its petition for modification of Resolution E-3527. TURN participated in the federal proceeding first as amicus curiae, then as a permissive intervenor based on the court's determination that TURN's participation would be helpful to the court. TURN also stated that the first ground cited by the court in its decision denying the utilities' request for a preliminary injunction, namely, that such an injunction would have altered rather than preserved the status quo, had been argued only by TURN.

The Commission has previously allowed compensation for activities before the California Legislature where the legislative hearings pertained to a proceeding before the Commission: "We believe that time devoted to these hearings was properly chargeable for intervenor compensation. The procedural matters discussed and advice obtained were a part of the guidance that went into the eventual decision in this matter." (D.95-08-051, Re Alternative Regulatory Frameworks for Local Exchange Carriers, (1995) 61 CPUC2d 142, 148.)

Here, the relief requested by the utilities, if granted by the federal court, would have precluded this Commission from even considering the modifications to Resolution E-3527 sought by TURN. Protecting the Commission's authority to modify the Resolution was a necessary prerequisite to ensuring that the Commission could address the merits of the petition. As illustrated by the federal court's granting TURN permissive intervention and

relying on TURN's arguments, TURN's participation in that forum protected the Commission's authority to act as it eventually did. In this way, TURN's federal court actions significantly contributed to "the eventual decision in this matter." Consequently, consistent with D.95-08-051, we will recognize TURN's expenses for participation in the federal court as part of its intervenor compensation claim.

We believe this outcome is consistent with the letter, spirit, and intent of the intervenor compensation statute. TURN's federal court litigation was an essential prerequisite, procedurally and substantively, to these consolidated proceedings and to the Commission decisions that are the subject of TURN's compensation request. As such, TURN could not practically or effectively advocate its position before the Commission without first defeating utility litigation intended to prevent the Commission from acting on the very points TURN was seeking to raise at the Commission.

3.2 Contribution to Other Decisions

In D.01-05-064, we addressed the revenue allocation and rate design issues created by the three-cent increase authorized by D.01-03-082. TURN stated that it substantially contributed to that decision because the Commission adopted TURN's positions on (1) definition of "equity" in rate design principles and goals, (2) revenue allocation methodology, (3) five-tier residential rate structure, and (4) non-residential rate spread, and several other smaller issues. We agree with TURN that its participation resulted in a far-reaching and substantial contribution to D.01-05-064. TURN also made substantial contributions to D.01-03-029, on the issue of the proper accounting for employee reductions and other cost-cutting measures, and to D.01-01-018, on the issue of utility shareholders bearing a share of the unanticipated costs of electricity procurement.

4. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of $649,134.95, as follows:

Attorney Fees—TURN Staff Counsel						
Robert Finkelstein	201.75	hours	X	$280	=	$56,490.00
	429.75	hours	X	$320	=	$137,520.00
	41.25	hours	X	$160	=	$6,600.00
Michel P. Florio	124.75	hours	X	$350	=	$43,662.50
Matthew Freedman	104.25	hours	X	$190	=	$19,807.50
				Subtotal	=	$**264,080.00**
Attorney Fees—Outside Counsel						
Michael Strumwasser	456.8	hours	X	$425	=	$194,140.00
Fredric Woocher	9.7	hours	X	$425	=	$4,122.50
Harrison Pollak	456.0	hours	X	$250	=	$114,000.00
Johanna Shargel	2.0	hours	X	$250	=	$500.00
Expenses						$10,818.97
				Subtotal	=	$**323,581.47**
Expert Witness Fees and Expenses						
JBS ENERGY INC.						
William Marcus	236.32	hours	X	$160	=	$37,811.20
Gayatri Schilberg	20.10	hours	X	$115	=	$2,311.50
Jeff Nahigian	45.25	hours	X	$100	=	$4,525.00
JBS Expenses						$482.92
				JBS Subtotal	=	$**45,130.62**
Other Costs						
Photocopying expense						$13,148.28
Postage costs						$1,902.11
Fax charges						$18.40
Federal Express/Delivery costs						$39.52
Attorney travel						$67.50
Consultant fee[4]						$531.25
Phone costs						$292.61
Lexis charges						$343.19
				Subtotal	=	$16,342.86
	TOTAL					$**649,134.95**

[4] This fee reflects limited consultations (4.25 hours) with economist Ian Goodman. His hourly rate ($125) has been approved previously by the Commission.

4.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Section 1801.3, where the Legislature gave the Commission guidance on program administration. (Mimeo. at 31-33, and Finding of Fact 42.) In that decision, we discuss the requirement 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. Customers are directed 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.

We did not attribute our adopted positions in D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064 to specific parties, although we have discussed their various contributions throughout. Furthermore, we have considered the substantial contributions of TURN through its cross-examination, briefs, and other participation in this proceeding. TURN stated that as the principal author and proponent of the accounting changes adopted in D.01-03-082, it can claim primary credit for helping all consumers avoid being assigned billions of dollars in unintended cost recovery. TURN similarly points out that its arguments on the revenue allocation issues assisted the Commission in reducing by hundreds of millions of dollars the costs allocated to residential and small commercial customers. In a context of unprecedented proposals to increase rates, we believe that TURN's participation was productive and greatly assisted us in our overall decision-making, as well as with specific decisions on certain disputed issues. The results of these decisions provided significant savings to ratepayers.

While we did not adopt all the arguments presented by TURN, our deliberations were enhanced by TURN's arguments and analysis. Most importantly, we benefited from TURN's initiative in proposing the accounting changes, and TURN's pursuit of implementation of those changes. Although TURN's compensation request is considerable, the ratepayer savings on the issues advanced by TURN greatly exceed the amount of the request.

4.2 Hours Claimed

TURN documented its claimed hours through detailed records of the time spent by its attorneys, outside counsel, and outside experts in the different phases of this proceeding. The records indicate both the professional hours and the activities associated with the hours. The hourly breakdowns and allocation of hours reasonably support the claimed hours for TURN.

4.3 Hourly Rates

TURN's requested hourly rates and the approved hourly rates for its attorneys are set out below:

Attorney	2000		2001	
	Requested	Approved	Requested	Approved
R. Finkelstein	280	280	320	310
M. Florio	350[5]	315[6]	350	350
M. Freedman	190	180	190	190
Strumwasser	425	315	425	350
F. Woocher	425	315	425	350
H. Pollak	250	180	250	190
J. Shargel	250	180	250	190

For their work in 2001, attorneys Finkelstein and Florio request an increase of 14% and 13%, respectively, from their approved hourly rates for 2000. The Commission has a practice of increasing hourly compensation on an annual basis in recognition of increased experience and other factors. The most common increase is $10/hour, see, e.g., D.01-09-045, but the Commission recently approved an increase of $20 hour, or about 10%, in D.01-11-054. We will authorize an increase for Finkelstein and Florio of 10%, with the amount rounded to the nearest $10. Consequently, Finkelstein's hourly rate for 2001 will

[5] TURN notes that Florio's annual rates have been set by the Commission on a fiscal year basis, "for reasons no longer clear but still respected." To simplify our procedures, we will take this opportunity to move Florio to a calendar year basis.

[6] After TURN submitted its request for intervenor compensation in this proceeding, the Commission approved a rate of $315/hour for Florio for 2000 in D.01-11-014 but left open the appropriate rate for 2001 in recognition of this pending request.

be $310 ($280 x 1.1 = $308, rounded to $310) and Florio's rate will be $350, as requested ($315 x 1.1 = $346.50, rounded to $350).

Attorneys Woocher and Strumwasser have not previously appeared before this Commission. Their training and experience levels are comparable to Florio's (more than 20 years), so we compensate them at Florio's hourly rate. We note that Woocher and Strumwasser are in private practice and that TURN stated that their regular billing rate was substantially greater than the rate we allow. In evaluating the particular facts of this case, however, we conclude that Woocher's and Strumwasser's applicable training and experience do not justify an hourly rate in excess of Florio's.

Attorney Freedman is a new staff attorney at TURN. We previously approved a compensation rate of $170 for 1997 for a TURN attorney of comparable skill and experience. We will increase that amount by $10 for work in 2000, as well as another $10 for work in 2001.

Attorneys Pollack and Shargel have more extensive overall legal experience than Freedman, but their energy litigation experience is comparable to Freedman. We will, therefore, compensate them at the same level as Freedman.

TURN also requests compensation for its expert witnesses, William Marcus, Gayatri Schilberg, and Jeff Nahigian of JBS Energy, Inc. at rates of $160, $115, and $100, respectively. These hourly rates reflect modest increases from our previously approved rates for 1999, and will be approved.

As modified, TURN's overall request is:

Attorney Fees—TURN Staff Counsel						
Robert Finkelstein	201.75	hours	X	$280	=	$56,490.00
	429.75	hours	X	$310	=	$133,222.50
	41.25	hours	X	$160	=	$6,600.00
Michel P. Florio	87.5	hours	X	$315	=	$27,562.50
	37.25	hours	X	$350	=	13,037.50
Matthew Freedman	104.25	hours	X	$190	=	$19,807.50
				Subtotal	=	$**256,720.00**
Attorney Fees—Outside Counsel						
Michael Strumwasser	104.1	hours	X	$315	=	$32,791.50
	352.7	hours	X	$350	=	$123,445.00
Fredric Woocher	5.9	hours	X	$315	=	$1,858.50
	3.8	hours	X	$350	=	$1,330.00
Harrison Pollak	87.3	hours	X	$180	=	$15,714.00
	368.7	hours	X	$190	=	$70,053.00
Johanna Shargel	2.0	hours	X	$190	=	$380.00
Expenses						$10,818.97
				Subtotal	=	$**256,390.97**
Expert Witness Fees and Expenses						
JBS ENERGY, INC.						
William Marcus	236.32	hours	X	$160	=	$37,811.20
Gayatri Schilberg	20.10	hours	X	$115	=	$2,311.50
Jeff Nahigian	45.25	hours	X	$100	=	$4,525.00
JBS Expenses						$482.92
				JBS Subtotal	=	$**45,130.62**
Other Costs						
Photocopying expense						$13,148.28
Postage costs						$1,902.11
Fax charges						$18.40
Federal Express/Delivery costs						$39.52
Attorney travel						$67.50
Consultant fee						$531.25
Phone costs						$292.61
Lexis charges						$343.19
				Subtotal	=	$16,342.86
	TOTAL					$**574,584.45**

4.4 Other Costs

TURN requests $16,342.86 for other costs (e.g., photocopying, postage, fax, delivery fees, legal research). These costs have been itemized by date, amount, and activity. Based on the scope of TURN's work, documents needed, the number of phases of the proceeding, and the size of the service list (238), these costs appear reasonable.

5. Award

We award TURN $574,584.45. Our calculation is based on the hourly rates described above.

We will assess responsibility for payment equally among PG&E and Edison. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 11,2001 (the 75th day after TURN filed its compensation request) and continuing until each utility makes its full payment of award.

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

6. Waiver of Comments on Draft Decision

This is a decision on a request for compensation pursuant to Pub. Util. Code §§ 1801 et seq.; accordingly, under Rule 77.7(f)(6) of the Commission's

Rules of Practice and Procedure, 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.01-01-018, D.01-03-029, D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064 in this proceeding.

2. TURN has made a showing of significant financial hardship by reference to a previous determination.

3. TURN contributed substantially to D.01-01-018, D.01-03-029, D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

4. TURN has requested hourly rates for attorneys, as modified above, and experts are no greater than the market rates for individuals with comparable training and experience.

5. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

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

2. TURN should be awarded $574,584.45 for its substantial contribution to D.01-01-018, D.01-03-029, D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

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.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $574,584.45 in compensation for its substantial contribution to Decision (D.) 01-01-018, D.01-03-029, D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

2. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) shall each pay TURN $287,292.23, within 30 days of the effective date of this order. PG&E and Edison 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 July 16, 2001 and continuing until full payment is made.

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

This order is effective today.

Dated _____, at San Francisco, California.