Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Develop Rules and Procedures to Ensure that Investor-Owned Water Utilities will not Recover Unreasonable Return on Investments Financed by Contamination Proceeds, Including Damage Awards, and Public Loans Received Due to Water Supply Contamination.	Rulemaking 09-03-014 (Filed March 12, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION (D.) 10-10-018 and D.10-12-058

Claimant: The Utility Reform Network (TURN)	**For contribution to D.10-10-018 and D.10-12-058**
Claimed: $53,475	**Awarded: $49,010 (reduced 8%)**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: Gary Weatherford**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: In D.10-10-018, the Commission determined that replacement plant funded by various classes of contamination proceeds covered in this rulemaking proceeding is to be treated as Contribution In Aid of Construction (CIAC) and, as such, excluded from rate base. The decision also adopted policies, a framework for analysis, and proposed rules to govern the accounting and ratemaking treatment variously of local and federal government grants received by an investor-owned water utility following contamination of its water supply. In D.10-12-058, the Commission set out further rules to govern the accounting and ratemaking treatment for proceeds from government loans, damage awards, settlements, government orders and insurance proceeds received under similar circumstances.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code Sections 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	None	Correct
2. Other Specified Date for NOI:	August 21, 2009	Correct
3. Date NOI Filed:	September 21, 2009	Correct
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:	R.09-03-014	Correct
6. Date of ALJ ruling:	September 23, 2009	Correct
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:	R.09-03-014	Correct
10. Date of ALJ ruling:	September 23, 2009	Correct
11. Based on another CPUC determination (specify):		April 22, 2009 ruling in A08505023
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-12-058	Correct
14. Date of Issuance of Final Decision:	December 21, 2010	Correct
15. File date of compensation request:	February 9, 2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. **The Costs To Ratepayers Of CIAC Treatment Versus Including in Rate Base Plant Funded By**		Yes

Remediation Proceeds: A central issue in this rulemaking was whether the Contribution In Aid of Construction (CIAC) treatment called for by Division of Ratepayer Advocates (DRA) and TURN would yield lower costs to ratepayers as compared to the rate-based treatment preferred by CWA (California Water Association) and the utilities. Early in the proceeding, TURN generally supported the analysis presented by DRA. The ALJ Ruling of April 20, 2010 sought further analysis of the cost comparison presented in the DRA analysis. TURN did not offer opening comments, but filed reply comments that challenged the critique that CWA presented of DRA's analysis. In D.10-10-018, the Commission stated, "we found the analysis presented by TURN (based on the work of its consultant) to be the most helpful in demonstrating the cost differences." It relied on TURN's calculations as the basis for estimating the net present value cost premium of the rate-basing approach sought by CWA and the utilities. When the Proposed Decision (PD) issued, CWA filed comments alleging numerous errors and flaws in TURN's analysis. TURN's reply comments on the PD explained why CWA's allegations were without merit. The final decision devoted more than a page to discussing the allegations and TURN's response thereto, and concluded by stating its concurrence with TURN's cost comparison analysis.	TURN Reply Comments (July 1, 2009), pp. 3-6. TURN Reply Comments to the ALJ's Ruling (May 28, 2010), pp. 2-5. D.10-10-018, pp. 36-38; *see also* p. 44, Finding of Fact 6, Conclusion of Law 6. TURN Reply Comments on PD (September 20, 2010), pp. 4-5. D.10-10-018, pp. 39-41.	
2. **Responding to Contamination and a Regulated Water Utility's "Duty to Serve":** TURN's reply comments in this rulemaking responded to the "three principles" put forward in CWA's opening comments, and pointed out	TURN Reply Comments (July 1, 2009), pp. 2-3.	Yes

that an equally important principle is the regulated water utilities obligation to serve, and that the proper treatment of contamination proceeds needed to be consistent with that obligation to serve. In TURN's opening and reply comments on the workshop report, we again discussed the obligation to serve, this time in the context of the utility's incentive to seek government loans and other damage awards to fund contamination-related plant investments. In D.10-10-018, the Commission agreed with this principle: "In short, it is something that now normally comes within the obligation to serve associated with utility status that also brings the opportunity to gain a reasonable rate of return as granted by the Commission."	TURN Opening Comments on Workshop Report (January 12, 2010), pp. 1-2; TURN Reply Comments (February 2, 2010), pp. 5-7. D.10-10-018, p. 50; *see also* Finding of Fact 3.	
3. **CWA-Proposed "Principles":** In the opening comments on the OIR, CWA identified and discussed three principles that the industry group urged the Commission to adopt to guide its determination as to what portion of contamination proceeds should be rate based rather than given CIAC treatment. TURN's reply comments countered that the CWA principles overlooked the fact that dealing with water contamination remediation and damage recovery from third parties is a regular part of operating as a regulated water utility, and that the authorized return on equity includes cost recovery risks. The Commission explicitly rejected the three ratemaking principles urged by CWA in connection with the choice of CIAC versus rate basing (although it recognized that two of the principles could serve to inform the allocation of	CWA Opening Comments (June 1, 2009). TURN Reply Comments (July 1, 2009) D.10-10-018, p. 44.	Yes

net proceeds).		
4. **Accounting Rules for Government Loans and Damage Awards, Settlements, Etc.:** The Commission issued proposed accounting rules for the CIAC treatment of government loans and damage awards, settlements, government order and insurance proceeds. TURN did not offer opening comments, but submitted reply comments that largely responded to the positions put forward by CWA on these matters and generally defended the rules as proposed. When the Proposed Decision on these accounting rules issued, CWA's opening comments raised concerns regarding the application of the "Infrastructure Act." The industry group pointed out that the Commission had already addressed similar questions in its "gain on sale" rulemaking decision (D.07-09-021). TURN reviewed the CWA arguments and the materials cited therein, consulted with DRA, and came to the conclusion that CWA was correct, but sought relief that was overly broad. TURN's reply comments urged the Commission to modify the CWA-proposed Finding of Fact and Conclusion of Law on this point to narrow their scope to the circumstances considered in the rulemaking. The final decision included the CWA-proposed Conclusion of Law, but with the modification proposed by TURN.	TURN Reply Comments (November 9, 2010). TURN Reply Comments (December 13, 2010), pp. 1-4. D.10-12-058, Conclusion of Law 6	Yes

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

Claimant		CPUC Verified
a. Was DRA a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct

c. If so, provide name of other parties: The regulated water utilities were generally represented by California Water Association (CWA), although individual water utilities filed separate comments as well (Park Water Company, Fruitridge Vista Water Company, California-American Water Company, and San Gabriel Valley Water Company).	Correct
d. Claimant's description of how its coordinated with DRA and other parties to avoid duplication or how claimant's participation supplemented, complemented, or contributed to that of another party: TURN worked very closely with DRA in this proceeding in the development of our respective positions and strategies for their presentation. TURN regularly consulted with DRA's counsel to determine the issues each party had identified to better ensure that all issues were covered with a minimum of duplication. And in one important regard, TURN's participation complemented DRA's analysis by providing further support in our May 2010 reply comments for the calculations DRA had presented earlier in the proceeding. TURN shared the results of our analysis with DRA prior to filing those comments, and DRA was able to refer to that analysis in the staff's own comments (DRA Reply Comments 5/28/10, p. 3.) Where, as here, the issues under consideration fall within a relatively narrow range and two of the active parties represented the interests of small ratepayers, there will be some amount of overlap. However, even with two parties representing similar consumer interests, TURN and DRA were outnumbered by the active water utilities and CWA throughout the course of this proceeding. TURN submits that we took all reasonable steps to minimize such overlap and to ensure that when it did occur it served to permit TURN and DRA to supplement and complement each other's showing on these issues.	We agree that TURN took reasonable steps to avoid duplicating the efforts of other parties and that its participation supplemented, complemented and contributed to that of DRA and that TURN took reasonable steps when possible to minimize overlap with DRA.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant's description of how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	**CPUC Verified**
As with many quasi-legislative proceedings, the precise benefits to consumers from TURN's participation in this docket are difficult to quantify. However, the issues at stake in this proceeding and the rules promulgated by the Commission will directly impact all consumers who take service from water utilities who receive contamination proceeds. Furthermore, the Commission determined that the CIAC approach preferred by TURN and DRA has a lower cost to ratepayers. The Commission particularly noted TURN's analysis in	After some minor disallowances that we outline in Part III, Section C of this claim, the

adopting the CIAC approach. Viewed in the aggregate, TURN's requested attorney and advocate time totals approximately 120 hours, or approximately three weeks assuming a 40-hour work week. For a proceeding that extended over a period of nearly two years and included three-days of workshops plus several rounds of comments, this is a reasonable number of hours.	remaining hours 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 $**
R. Finkelstein	2009	20.00	470	D.09-10-051	9,400	2009	19.50	470	9,165
R. Finkelstein	2010	73.25	470	D.10-09-042	34,428	2010	64.25	470	30,198
R. Costa	2009	23.25	275	D.10-06-016	6,394	2009	23.25	275	6,394
					Subtotal:$50,222				***Subtotal: $45,757***
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
W. Marcus	2009 and 2010	6.90	250	D.10-03-019 and D.10-09-045	1,725	2009 and 2010	6.90	250	1,725
					Subtotal: $1,725				***Subtotal:$1,725***
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
R. Finkelstein	2009 and 2011	6.50	235	½ D.09-08-025 rate and Resolution ALJ 247 and 267	1,528	2009 and 2011	6.50	235	1,528
					Subtotal: $1,528				***Subtotal: $1,528***
COSTS									
Detail					**Amount**	**Amount**			
TURN incurred minimal costs, and is not seeking cost recovery here.					-0-	-0-			
					Subtotal: -0-	***Subtotal: -0-***			
					TOTAL REQUEST: $53,475[1]	**TOTAL AWARD: $49,010[2]**			

* 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,

[1] Total request rounded to nearest dollar amount.
[2] Total award rounded to nearest dollar amount.

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.

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

C. Comments Documenting Specific Claim:

Comment	Description/Comment
#1	**Reasonableness of TURN Hours**: This rulemaking proceeding raised important ratemaking issues of general application (the appropriate ratemaking treatment of investment funded through contamination proceeds rather than the typical sources for utility capital investment). Robert Finkelstein was the sole TURN attorney assigned to this proceeding from its start through its conclusion. Two days of workshops in late September 2009 overlapped with several other pleadings due in other CPUC matters in which Finkelstein was TURN's lead attorney. Therefore Regina Costa briefly substituted for Finkelstein in this rulemaking, covering the second day of workshops as originally scheduled, as well as a third day added during the process. As one would expect, Costa recorded proportionately more hours for her work covering the workshops than did Finkelstein, consistent with her lesser level of familiarity with the proceeding and the issues at the time of the workshops. Given the lower billing rate associated with Costa's time, TURN submits that the total requested compensation associated with its attendance at these workshops is approximately the same as would have been likely had Finkelstein's schedule permitted him to attend all of the workshops himself. William Marcus of JBS Energy recorded a very small number of hours in this case playing a critical role in developing and then defending the analysis comparing the cost to ratepayers of rate basing investment of water contamination proceeds rather than affording them CIAC treatment. Finally, TURN is requesting compensation for 6.5 hours devoted to compensation-related matters, primarily preparation of this request for compensation. TURN submits that this small number is at the low end of the range typically included in TURN requests for compensation of this magnitude, and should be found reasonable.
#2	**Allocation of Hours:** TURN typically includes in its compensation requests an allocation of time among the issues that it addressed. In this case TURN believes it makes more sense to allocate by task as a useful substitute under the circumstances. The initial focus of this proceeding involved providing analysis and comment on the issues identified in the Order Instituting Rulemaking. During this period (covering entries from 5/26/09 through 7/1/09), Finkelstein recorded 14.25 hours, and Marcus recorded 0.83 hours. The next period involved preparing for and participating in the workshops conducted

	by the Division of Water and Audits. During this period (covering entries from 9/17/09 through 10/8/09), Finkelstein recorded 5.25 hours, and Costa recorded all 23.25 of her hours in this proceeding. The workshop report issued on November 25, 2009. From that date through February 2, 2010, TURN's work entailed review of the report and related material, and preparation of opening and reply comments on the report. During this period, Finkelstein recorded 28.25 hours, and Marcus recorded 0.33 hours. On April 20, 2010, ALJ Weatherford issued a ruling calling for comments on two specific issues: a comparison of CIAC versus rate base treatment for government loans, and factors that should be expected to guide future proceedings related to receipt of contamination proceeds. TURN prepared reply comments served May 28, 2010 that sought to debunk the CWA critique of DRA's calculations comparing CIAC and rate base, and addressed the CWA position regarding guiding factors for future proceedings. During this period, Finkelstein recorded 4.0 hours, and Marcus recorded 3.75 hours. The Proposed Decision was issued on August 3, 2010. From that date through September 20, 2010, TURN's recorded hours were primarily associated with preparing responses to discovery TURN received from CWA, reviewing the opening comments of CWA and preparing reply comments. During this period, Finkelstein recorded 17.75 hours, and Marcus recorded 1.75 hours. ALJ Weatherford issued a ruling on October 18, 2010, seeking further comments on proposed accounting rules for two categories of contamination proceeds. A proposed decision followed on November 15, 2010. TURN provided reply comments, both on the initial responses to the ALJ ruling and to the Proposed Decision. The Commission issued D.10-12-058 on December 21, 2010, addressing these accounting rules. During this period, Finkelstein recorded 23.75 hours, and Marcus recorded 0.25 hours. TURN submits that under the circumstances this information should suffice to address the allocation requirement under the Commission's rules. Should the Commission wish to see additional or different information on this point, TURN requests that the Commission so inform TURN and provide a reasonable opportunity for TURN to supplement this showing accordingly.
#3	**Hourly Rate for TURN attorney in 2011**: The Commission has not previously authorized an hourly rate for TURN's attorneys or consultants where a substantial portion of the substantive work in the proceeding occurred in 2010. In this proceeding TURN requests compensation using the previously-approved 2009 hourly rates for each attorney's and consultant's 2010 work. TURN reserves the right to seek a higher hourly rate for work performed in 2010 in a future request for compensation.

D. CPUC Disallowances:

We make some minor disallowances to TURN's claim for excessive hours given the scope of the work.	
2009- Finkelstein hours	We disallow .5 hrs. of Finkelstein's time on 6/1 spent "drafting and editing opening comments.
2010- Finkelstein hours	We disallow 1.0 hrs. of Finkelstein's time on 1/7 spent "reviewing DWA Workshop report; research; phone call with M Sharpson." We disallow 1.0 hr. of Finkelstein's time on 1/8 spent on "further review DWA report; draft e-mail to M. Sharpson re: potential issues in workshop report." We disallow 1.0 hr. of Finkelstein's time on 1/12 spent "drafting and editing comments on workshop report." We disallow 1.0 hr. of Finkelstein's time on 2/1 spent "drafting reply comments on workshop report." We disallow 1.0 hr. of Finkelstein's time on 2/2 spent "drafting and editing reply comments on workshop report." We disallow .75 hrs. of Finkelstein's time on 9/17 spent "reviewing CWA comments for developing detailed outline, draft outline, further review of record materials." We disallow .75 hrs. of Finkelstein's time on 9/19 spent "drafting reply comments on PD." We disallow .75 hrs. of Finkelstein's time on 9/20 spent "drafting reply comments; reviewing BM material on analysis, incorporate into reply comments." We disallow 1.0 hr. of Finkelstein's time on 10/30 spent "reviewing proposed accounting rules, CWA comments and proposed revision to accounting rules; begin drafting memo re: same." We disallow .75 hrs. of Finkelstein's time on 11/3 spent "outlining and drafting comments."

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
B. Comment Period: Was the 30-day comment period waived?	Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.10-10-018 and D.10-12-058.

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 $49,010.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code Sections 1801-1812.

ORDER

1. Claimant is awarded $49,010.

2. To avoid imposing an administrative burden by allocating very small shares of the award to smaller entities, within 30 days of the effective date of this decision, we direct the Class A water companies: California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company to allocate payment responsibility among themselves based on their 2010 California-jurisdictional water revenues. 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 April 25, 2011, 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.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision:	D1010018 and D1012058	
Proceeding:	R0903014	
Author:	ALJ Gary Weatherford	
Payer:	California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	02-09-11	$53,475	$49,010	No	excessive hours given the scope of the work

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	$470	2009/2011	$470
Regina	Costa	Attorney	The Utility Reform Network	$275	2009	$275
William	Marcus	Expert	The Utility Reform Network	$250	2009/2010	$250

(END OF APPENDIX)