Decision _____

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

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|---|---|
| In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY For Authorization to Establish a Revenue Sharing Mechanism for the Production of Native Gas. (U 904 G) | Application 04-01-034 (Filed January 26, 2004) |

# OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 06-06-065

## I. Summary

This decision awards The Utility Reform Network (TURN) $20,891.31 in compensation for its substantial contributions to Decision (D.) 06-06-065. This proceeding is closed.

## II. Background

D.06-06-065 addressed the application of Southern California Gas Company (SoCalGas) for permission to establish a cost and revenue sharing mechanism for the exploration and production of native natural gas located adjacent to its existing natural gas storage fields.

D.06-06-065 was issued after attempts by the parties to resolve the issues in this proceeding, and the filing of a stipulation (later revised) and a proposed Settlement Agreement. (See D.06-06-065, pp. 2-4.) Two days of evidentiary hearings were held in December 2005, and the proceeding was submitted on January 27, 2006 with the filing of reply briefs. The cost and revenue sharing

mechanism adopted for SoCalGas consists of the terms, conditions, and rules set forth in the appendices to D.06-06-065. These consist of the Settlement Agreement, the Revised Joint Stipulation, and the rules attached to the original stipulation. The adoption of this revenue sharing mechanism provides SoCalGas with an incentive for exploration and production of native gas, and the opportunity for SoCalGas' ratepayers and shareholders to share equally in the benefits.

## III. Requirements for Award of Compensation

The intervenor compensation program, enacted in Public Utilities Code Sections 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings.[1] Section 1807 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:

1. 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), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

[1] Unless otherwise indicated, all subsequent statutory references are to the Public Utilities Code.

3. The intervenor should 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).)

4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

5. 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. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are reasonable (§ 1801), 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 (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

## IV. Procedural Issues

The initial prehearing conference in this proceeding was held on April 27, 2004. TURN timely filed its NOI on May 27, 2004. In its NOI, TURN asserted financial hardship.

Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. On August 24, 2004, Administrative Law Judge (ALJ) John S. Wong ruled that TURN is a customer pursuant to § 1802(b)(1)(C). The ruling further found that TURN met the

financial hardship condition through the rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because TURN met this requirement in another proceeding within one year of the commencement of this proceeding. (See ALJ Ruling dated March 25, 2003, in Rulemaking 02-07-050.)

TURN filed its request for compensation on September 1, 2006, within 60 days of D.06-06-065 being issued.[2] In view of the above, we affirm the ALJ's ruling and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

## V. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1801.3(f) 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

[2] No party opposes the request or NOI.

> contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[3]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN contends that it participated actively in this proceeding through the submission of attorney Michel Florio's testimony proposing a different method of sharing potential revenues, its active participation in extensive settlement negotiations which resulted in the filing of the Settlement Agreement on July 25, 2005, and changes to the Revised Joint Stipulation.

The Settlement Agreement calls for a 50/50 sharing of the costs and benefits associated with the development and production of any natural gas adjacent to SoCalGas' storage fields, with a limit of $3 million on the ratepayers' contribution. TURN opposed SoCalGas' original proposal that ratepayers receive 10% of the gross revenues from the production of this gas and instead recommended that ratepayers receive 35%. TURN supported the Settlement Agreement's proposal to share the costs and revenues on a 50/50 basis. TURN points out the Settlement Agreement "provides for a much higher potential

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[3] D.98-04-059, 79 CPUC 2d 628 at 653.

benefit to ratepayers without incurring unreasonable risks for ratepayers." (TURN Request for Compensation, p. 2.)

TURN also asserts that it helped contribute to the resolution of the conflict between the Settlement Agreement and the Revised Joint Stipulation. TURN, together with the Commission's Division of Ratepayer Advocates (DRA) and the Southern California Generation Coalition (SCGC), objected to two provisions in the Revised Joint Stipulation. Although the Commission adopted both of the provisions, TURN notes that the Commission recognized that the Revised Joint Stipulation was a reasonable compromise and resolution. In view of these issues, TURN discounted 50% of the 23.25 hours spent by its attorney on this subject.

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (*See* D.98-04-028, 79 CPUC 2d 570, 573-574.) Here, TURN achieved a high level of success on the issues it raised pertaining to how the costs and revenues from the proposed gas exploration and production should be shared. We recognized that:

> "… the ratepayers' cost exposure is greater under the Settlement Agreement, as compared to the original sharing mechanism proposal. However, the ratepayers' cost exposure is limited by the $3 million cost cap, and the revenues that are generated from the sale of the native gas. With respect to the ratepayers' share of the native gas revenues, the ratepayers are in a position to benefit if the production from the native gas prospects is successful. The equal sharing of the native gas revenues between SoCalGas' shareholders and ratepayers allows ratepayers to share in the profit potential of the native gas prospects. Accordingly, we find that the Settlement Agreement's treatment of the costs and revenues equitably compensates ratepayers, and is fair to both SoCalGas' shareholders and ratepayers." (D.06-06-065, p. 44.)

Regarding the two provisions in the Revised Joint Stipulation to which TURN objected, although we did not adopt TURN's position, we benefited to some extent from TURN's analysis and discussion of those issues (D.06-06-065, pp. 26-28, and pp. 38-43). TURN's discounting of its attorneys' time on those issues is reasonable.

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates similar interests that are adequately represented by another party, or unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if its participation materially supplements, complements, or contributes to that of another party if the latter makes a substantial contribution to the Commission's order.

TURN acknowledges that it collaborated closely with DRA and SCGC in this proceeding, especially during the evidentiary hearing. TURN points out, however, that it provided independent recommendations in its direct testimony, and independent analyses and positions during the settlement negotiations. Based on TURN's work toward a more equitable sharing of the costs and revenues as reflected in the Settlement Agreement, and its collaboration with DRA and SCGC on the Revised Joint Stipulation, we find that TURN's position did not duplicate the efforts of DRA and SCGC, and that its efforts regarding the Revised Joint Stipulation complemented the work of DRA and SCGC.

In view of all of the above factors, we find that TURN made a substantial contribution to D.06-06-065.

## VI. Reasonableness of Requested Compensation

TURN requests $20,891.31 for its participation in this proceeding, as follows:

| ITEM | AMOUNT |
|---|---|
| Attorney Services | $20,662.50 |
| Consulting Expenses | $64.35 |
| Direct Expenses | $164.46 |
| Total Expenses Claimed | $20,891.31 |

In general, 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. The issues we consider to determine reasonableness are discussed below:

### A. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

As set forth in Appendix A of TURN's request for compensation, TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours claimed.

### B. Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

With the exception of Hawiger's rate for 2006, the hourly rates TURN requests for its attorneys and consultant were previously approved, as set forth in the following table:

| Name | 2004 Rate | 2005 Rate |
|---|---|---|
| Marcel Hawiger Attorney | $270 – D.05-04-031 | $270 – D.06-04-029 |
| Michel P. Florio Attorney | $470 – D.05-01-029 | $470 – D.05-11-031 |
| Robert Finkelstein Attorney | $395 – D.05-04-049 | n/a |
| William Marcus Consultant | $195 – D.05-07-020 | n/a |

In Rulemaking (R.) 06-08-019, we addressed intervernor rates for work performed in 2006. Though no final decision has been issued in that proceeding, the order instituting rulemaking includes guidelines that allow for a 3% increase above previously approved 2005 rates, rounded to the nearest $5. The $280 rate for Hawiger for 2006 is consistent with these guidelines and is adopted here.

### C. Productivity

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 its participation. This showing assists us in determining the overall reasonableness of the request.

TURN points out that the quantifiable benefit to ratepayers in this proceeding is the potential for higher benefits due to the adoption of the 50/50 sharing mechanism, instead of the 10% sharing proposed by SoCalGas. We find that TURN's participation in this proceeding was productive, and bears a reasonable relationship to the benefits that ratepayers will realize if the

exploration and production of gas adjacent to SoCalGas' storage fields is successful, as compared to the amount of compensation that TURN is seeking in this request for compensation.

### D. Direct Expenses

The itemized direct expenses of $164.46 submitted by TURN include costs for photocopying, postage, telephone/fax, messenger services, and Lexis research. The cost breakdown included with the request shows these expenses to be commensurate with the work performed. We find these costs reasonable.

## VII. Award

We award TURN $20,891.31 for its substantial contributions to D.06-06-065. Consistent with previous Commission decisions, we 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 November 15, 2006, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SoCalGas as the regulated entity in this proceeding.

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. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

## VIII. Waiver of Comment Period

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

## IX. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

## Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.06-06-065 as described herein.
3. TURN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. TURN requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is $20,891.31.
6. The appendix to this opinion summarizes today's award.

## Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.06-06-065.
2. TURN should be awarded $20,891.31 for its contribution to D.06-06-065.
3. Per Rule 14.6(c)(6), the comment period for this compensation decision may be waived.

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

5. This proceeding should be closed.

## O R D E R

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded $20,891.31 as compensation for its substantial contributions to Decision 06-06-065.

2. Within 30 days of the effective date of this decision, Southern California Gas Company shall pay TURN 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 November 15, 2006, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

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

4. Application 04-01-034 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

# APPENDIX

## Compensation Decision Summary Information

| | | |
|---|---|---|
| **Compensation Decision:** | | **Modifies Decision?** |
| **Contribution Decision(s):** | D0606065 | |
| **Proceeding(s):** | A0401034 | |
| **Author:** | ALJ Wong | |
| **Payer(s):** | Southern California Gas Company | |

## Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|---|---|---|---|---|---|
| The Utility Reform Network | 9/1/06 | $20,891.31 | $20,891.31 | No | |

## 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 | $270 | 2004 | $270 |
| Marcel | Hawiger | Attorney | The Utility Reform Network | $270 | 2005 | $270 |
| Marcel | Hawiger | Attorney | The Utility Reform Network | $280 | 2006 | $280 |
| Michel | Florio | Attorney | The Utility Reform Network | $470 | 2004 | $470 |
| Michel | Florio | Attorney | The Utility Reform Network | $470 | 2005 | $470 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | $395 | 2004 | $395 |
| William | Marcus | Economist | The Utility Reform Network | $195 | 2004 | $195 |

**(END OF APPENDIX)**