

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into Implementation of Assembly Bill 970 Regarding the Identification of Electric Transmission and Distribution Constraints, and Related Matters Affecting the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

**OPINION GRANTING INTERVENOR COMPENSATION TO THE
UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISION (D.) 03-07-033, D.04-06-013, AND D.05-07-040**

This decision awards The Utility Reform Network (TURN) \$20,139.55, the total amount requested, in compensation for its substantial contributions to Decision (D.) 03-07-033, D.04-06-013, and D.05-07-040 in Investigation (I.) 00-11-001. Today's award payment will be allocated to the affected utilities based on their California-jurisdictional electric revenues for the 2005 calendar year.

1. Background

On November 2, 2000, the Commission initiated an Order Instituting Investigation intended to identify and address electric transmission and distribution constraints and other conditions that could affect the reliability of California's electric supply. Between 2003 and 2005, portions of this multiphase proceeding addressed the implementation of transmission-related provisions of

Public Utilities Code Section (§) 399.25,¹ which was enacted on September 12, 2002, as part of Senate Bill (SB) 1078. The main purpose of SB 1078 was to increase California's use of renewable energy resources, through programs such as the Renewable Portfolio Standard (RPS). On February 25, 2003, Administrative Law Judges (ALJs) Gottstein and Allen issued a ruling that contained a proposed framework for implementing § 399.25, and requested comments from interested parties (Joint Ruling).² The Joint Ruling set forth a general framework for incorporating the requirements of § 399.25 into the transmission planning process. Related activities within the proceeding included several phases consisting of rounds of comments and reply comments, and a workshop and report followed by more comments in early 2005.

The Commission adopted a process for implementing § 399.25 in D.03-07-033. In D.04-06-013, the Commission adopted a methodology for development and consideration of transmission costs in the initial RPS procurement. D.05-07-040 addressed the development of transmission costs for use in RPS procurements to be undertaken in 2005 pursuant to § 399.14. This proceeding was closed by D.06-09-003 on September 8, 2006.

TURN's compensation request filed in I.00-11-001 includes only TURN's work on transmission issues related to the RPS program. In Phase 5 of this proceeding, the Commission commenced an investigation of methodologies used

¹ All code section references are to the California Public Utilities Code unless noted otherwise.

² ALJs' Ruling Requesting Comments on Procedural Coordination of Renewables Procurement, Transmission Planning and Statutory Interpretation of Pub. Util. Code § 399.25, February 25, 2003.

to evaluate the economic benefits of transmission projects. We did not issue a decision in Phase 5, but instead transferred the Phase 5 record to a new investigation, I.05-06-041. The Commission subsequently issued D.06-11-018 in I.05-06-041, in which we adopted general principles and minimum requirements for economic evaluations of transmission projects. Because the work begun in Phase 5 of I.00-11-001 was continued in I.05-06-041 and led to D.06-11-018 in that proceeding, we agree with TURN that it is appropriate for TURN to include its Phase 5 costs in its compensation request filed in I.05-06-041 related to D.06-11-018. We will evaluate whether TURN's participation in Phase 5 of I.00-11-001 made a substantial contribution in that context.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in §§ 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. The statute 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, 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).)

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.

3. Procedural Issues

The initial prehearing conference in this proceeding was held on December 14, 2000. TURN timely filed its NOI on January 16, 2001. In its NOI, TURN asserted financial hardship. On March 3, 2004, TURN submitted a Supplemental NOI, updating its statement of the nature and intent of its planned participation in the proceeding.

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. In this case, TURN is a customer as defined in part C.

On February 5, 2001, ALJ Gottstein ruled that TURN is a customer pursuant to Category 3 under § 1802(b) (equivalent to the current paragraph C),

and meets the financial hardship condition, pursuant to § 1804(b)(1), because TURN met this requirement in other proceedings within one year of the commencement of this proceeding (ALJ Ruling dated December 29, 2000, in Application (A.) 00-09-002, and ALJ Ruling dated January 7, 2000, in A.99-10-023). On May 11, 2004, ALJ TerKeurst issued a ruling accepting TURN's supplemental NOI.

TURN submitted its request for compensation on November 7, 2006, within 60 days of D.06-09-003 being issued. In view of the above, we affirm the ALJs' rulings and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. We consider whether the ALJ or Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (See § 1802(i).) If the customer's contentions or recommendations paralleled those of another party, we consider whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a more complete record. (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 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 states that its involvement was extensive and included preparation of numerous sets of comments throughout several phases of this proceeding. TURN's filings included opening and reply comments responding to rulings in various phases of this proceeding, comments on two proposed Commission orders, and comments on a staff workshop report. Although, according to TURN, it was not successful on every argument presented, the decisions reflect the significant impacts of TURN's advocacy. Some specific contributions TURN made to the Commission decisions for which it requests compensation include the following:

- Suggestions that led to wording changes in D.03-07-033 clarifying that the adopted procedures, including calculations of transmission costs for the bid ranking process, are compatible with D.03-06-071 in R.01-10-024 establishing the RPS.

³ D.98-04-059, 79 CPUC2d 628 at 653.

- A proposal to allow generators not included in the original cost rankings to bid on RPS solicitations. In D.04-06-013, the Commission adopted a modified form of TURN's proposal.
- An alternative proposal that addressed potential confidentiality problems with the initial proposal for posting bidders' project information and costs on the Internet. The Commission adopted TURN's alternative in D.04-06-013.
- Information opposing a proposal for curtailment standards that TURN argued was unworkable. The Commission rejected the proposed curtailment standards in D.05-07-040.

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 CPUC2d 570, 573-574.) Here, TURN achieved a high level of success on the issues it raised. In the areas where we did not adopt TURN's position in whole or in part, we benefited from its analysis and discussion of the issues.

4.1. Contributions of Other Parties

No other intervenors participated on the issues for which TURN claims compensation, and therefore contributions of other parties are not an issue in this proceeding.

5. Reasonableness of Requested Compensation

TURN requests \$20,139.55 for its participation in this proceeding, as follows:

TURN Request		
Attorney Fees :		
Matthew Freedman	15.50 hours X \$225 (2003)	\$ 3,487.50
	13.50 hours X \$270 (2004)	\$ 3,645.00
	11.50 hours X \$270 (2005)	\$ 3,105.00
Michel P. Florio	0.25 hours X \$385 (2002)	\$ 96.25
	0.50 hours X \$470 (2004)	\$ 235.00
	11.50 hours X \$242.50 (2006 comp)	\$ 2,788.75
Subtotal		\$ 13,357.50
Expert Consultant Fees:		
Kevin Woodruff	3.00 hours X \$200 (2004)	\$ 600.00
	27.00 hours X \$200 (2005)	\$ 5,400.00
Subtotal		\$ 6,000.00
Other Reasonable Costs:		
	Photocopying expense	\$ 336.20
	Postage costs	\$ 59.40
	Consultant Travel & Lodging	\$ 386.45
Subtotal		\$ 782.05
TOTAL		\$ 20,139.55

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.

5.1. 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.

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.

5.2. 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.

For Florio, TURN seeks hourly rates of \$385 for 2002, \$470 for 2004, and \$485 for 2006.⁴ We previously approved these rates for Florio in D.03-10-011 (2002 rate), D.06-07-011 (2004 rate), and D.06-11-032 (2006 rate), and adopt them here.

For Freedman, TURN seeks hourly rates of \$225 for 2003, and \$270 for 2004 and 2005. We previously approved these rates for Freedman in D.05-01-029 (2003 rate) and D.06-07-011 (2004 and 2005 rates), and adopt them here.

For Woodruff, TURN seeks hourly rates of \$200 for 2004 and 2005. We previously approved these rates in D.06-07-011, and adopt them here.

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

⁴ Travel and time spent on compensation matters are paid at one-half the normal hourly rate. TURN charged all travel time at one-half the normal rate by reducing the hours claimed by one-half.

TURN states that, because this proceeding focused on policy issues, it is difficult to calculate a specific dollar amount or consumer savings resulting from its work, or otherwise quantify the benefits of its participation. However, TURN asserts that its involvement in this proceeding contributes to the goal of assuring timely delivery of cost-effective renewable resources to California consumers, which will have real and lasting benefits to ratepayers. We agree that the methodologies and policies adopted in this proceeding were improved through TURN's participation and have monetary and social benefits which, though hard to quantify, are substantial. Thus, we find that TURN's efforts have been productive.

5.4. Direct Expenses

The itemized direct expenses submitted by TURN include costs for travel and lodging, photocopying, and postage, and total \$782.05. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

6. Award

As set forth in the table below, we award TURN \$20,139.55.

	TURN Request		Approved		
	Hours	Rate	Hours	Rate	Total
Attorney Fees :					
Matthew Freedman	15.50	\$225 (2003)	15.50	\$225 (2003)	\$ 3,487.50
	13.50	\$270 (2004)	13.50	\$270 (2004)	\$ 3,645.00
	11.50	\$270 (2005)	11.50	\$270 (2005)	\$ 3,105.00
Michel P. Florio	0.25	\$385 (2002)	0.25	\$385 (2002)	\$ 96.25
	0.50	\$470 (2004)	0.50	\$470 (2004)	\$ 235.00
	11.50	\$242.50 (2006 comp request)	11.50	\$485 (2006 - paid at half for comp request)	\$ 2,788.75
Subtotal					\$ 13,357.50
Expert Consultant Fees:					
Kevin Woodruff	3.00	\$200 (2004)	3.00	\$200 (2004)	\$ 600.00
	27.00	\$200 (2005)	27.00	\$200 (2005)	\$ 5,400.00
Subtotal					\$ 6,000.00
Other Reasonable Costs:		Request			
Photocopying expense		\$ 336.20			\$ 336.20
Postage costs		\$ 59.40			\$ 59.40
Consultant Travel & Lodging		\$ 386.45			\$ 386.45
Subtotal		\$ 782.05			\$ 782.05
TOTAL		\$ 20,139.55			\$ 20,139.55

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 January 21, 2007, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-

jurisdictional electric revenues for the 2005 calendar year, the year in which the issues covered in this request were fully resolved.

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.

7. Waiver of Comment Period

As permitted by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Charlotte F. TerKeurst 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.03-07-033, D.04-06-013, and D.05-07-040 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 \$20,139.55.
6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 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.03-07-033, D.04-06-013, and D.05-07-040.
2. TURN should be awarded \$20,139.55 for its contributions to D.03-07-033, D.04-06-013, and D.05-07-040.
3. Pursuant to 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 \$20,139.55 as compensation for its substantial contributions to Decision (D.) 03-07-033, D.04-06-013, and D.05-07-040.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay their respective shares of the award. Each utility's share shall be calculated based on its California-jurisdictional electric revenues for the 2005 calendar year. 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 January 21, 2007, 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. Investigation 00-11-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? N
Contribution Decision(s):	D0307033, D0406013, D0507040	
Proceeding(s):	I0011001	
Author:	ALJ TerKeurst	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	11/7/2006	\$20,139.55	\$20,139.55	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470
Michel	Florio	Attorney	The Utility Reform Network	\$485	2006	\$485
Matthew	Freedman	Attorney	The Utility Reform Network	\$225	2003	\$225
Matthew	Freedman	Attorney	The Utility Reform Network	\$270	2004	\$270
Matthew	Freedman	Attorney	The Utility Reform Network	\$270	2005	\$270
Kevin	Woodruff	Policy Expert	The Utility Reform Network	\$200	2004	\$200
Kevin	Woodruff	Policy Expert	The Utility Reform Network	\$200	2005	\$200

(END OF APPENDIX A)