

Decision \_\_\_\_\_

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

Application of Pacific Gas and Electric Company to Establish Revenue Requirements, Rates, and Terms and Conditions of Service for Gas Transmission and Storage Services, for the Period 2008-2010.

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Application 07-03-012  
(Filed March 15, 2007)

**OPINION GRANTING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL  
CONTRIBUTIONS TO DECISION 07-09-045****1. Summary**

This decision awards The Utility Reform Network (TURN) \$47,984.00 in compensation for its substantial contributions to Decision (D.) 07-09-045.<sup>1</sup> This proceeding is closed.

**2. Background**

D.07-09-045 addressed the application of Pacific Gas and Electric Company (PG&E) to establish its revenue requirements and rates for its gas transmission and storage services for the period 2008 through 2010. In that decision, we approved and adopted a settlement agreement in which PG&E and 30 other parties agreed to settle all of the issues. The settlement agreement was unique in that the settlement negotiations were started, concluded, and an agreement

reached before PG&E filed its application on March 15, 2007. PG&E attached the settlement agreement to its application, and requested that the settlement agreement be approved.

The revenue requirements and rates agreed to in the settlement agreement represented a compromise by the various parties of their positions on many different issues. According to Section C of Exhibit 1 of this proceeding, PG&E would have requested much higher revenue requirements and rates had a settlement agreement not been reached.

### **3. Requirements for Award of Compensation**

The intervenor compensation program, enacted in Public Utilities Code §§ 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.<sup>2</sup> 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).)

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<sup>1</sup> This amount represents a small decrease from the requested amount of \$48,305, due to the adjustment of an attorney's hourly rate.

<sup>2</sup> Unless otherwise indicated, all subsequent statutory references are to the Public Utilities Code.

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 must 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 or as otherwise found by the Commission. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be 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.

#### **4. Procedural Issues**

The prehearing conference in this proceeding was held on May 15, 2007. TURN timely filed its Notice of Intent (NOI) on June 14, 2007. In its NOI, TURN asserted financial hardship based upon the rebuttable presumption of eligibility pursuant to § 1804(b)(1). No one challenged the presumption.

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 July 18, 2007, Administrative Law Judge (ALJ) John S. Wong ruled that TURN is a customer pursuant to § 1802(b). The ruling further found that TURN met the financial hardship condition through the rebuttable presumption of eligibility, as provided for in § 1804(b)(1), because TURN met the financial hardship requirement in another proceeding within one year of the commencement of this proceeding. (See ALJ Ruling dated November 15, 2006, in Investigation 06-06-014.) The July 18, 2007 ruling also found that TURN was eligible to file a claim for an award of compensation.

TURN filed its request for compensation on November 19, 2007, within 60 days of D.07-09-045 being issued.<sup>3</sup> 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.

## **5. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, we look at whether the 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).) Second, 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 fuller record that assisted the Commission in

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<sup>3</sup> No one filed any opposition to TURN's request for compensation.

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. As we said in D.98-04-059:

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. (D.98-04-059, 79 CPUC 2d 628 at 653.)

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.

As TURN noted in its NOI and in its request for compensation, its participation in this proceeding was somewhat unusual because TURN and the other intervening parties did not submit testimony or file pleadings regarding their positions before PG&E filed its application and settlement. Prior to the filing of its application and the settlement, PG&E opened a dialogue with interested parties to explore the possibility of settling some or all of the issues.

TURN contends that it made a wide range of substantial contributions to the settlement agreement that was adopted in D.07-09-045. TURN was extremely active in the meetings and negotiations which resulted in the all-party settlement of all of the issues in this proceeding. TURN states that it "attended

all settlement meetings, propounded data requests, analyzed the data provided by the company, and engaged in formal and informal negotiations with various parties as part of the successful effort to reach a mutually satisfactory resolution of the matters at stake.” (Request for Compensation, pp. 2-3.)

Although TURN and the other intervenors did not submit testimony or formal pleadings prior to the filing of PG&E’s application and the settlement, Table 5 of Exhibit 1 shows that the settlement rates are lower than the rates that PG&E would have sought by \$10.7 million in 2008, \$25.1 million in 2009, and \$38.3 million in 2010.

TURN was concerned in this proceeding about the potential impact of increases in the local transmission and storage rates on bundled core gas customers. TURN points out that PG&E had presented testimony in Exhibit 1 that demonstrated that PG&E would have sought much larger increases in local transmission rates, the bulk of which would be allocated to core customers, to reflect the forecasted construction of a number of major local transmission system enhancements. However, the dates on which these facilities would begin to provide service were uncertain, which created the risk that customers would end up paying for the facilities in rates before the facilities were actually placed into service.

To remedy this problem, TURN proposed establishing separate rate adders for these new facilities, which are to go into effect once the facilities are actually placed into service. TURN’s adder proposal was accepted by PG&E and the other settling parties, and incorporated into the settlement agreement. TURN contends that the benefit of the adder mechanism is that the incremental revenue for these local transmission projects will not be included into rates until the projects are actually constructed and begin providing service.

As for gas storage rates, PG&E would have requested an increase of over \$20 million, of which a large portion would have been allocated to core customers. As a result of the settlement, there will be no change in storage rates over the term of the settlement. Instead, PG&E will be at risk for the recovery of any increased gas storage costs through the sale of unbundled storage services.

In addition, TURN contends that it worked actively with other parties to resolve a number of other contentious settlement issues which resulted in the overall settlement, while preserving the settlement benefits for core ratepayers.

As evidenced by the settlement agreement, TURN made substantial contributions to D.07-09-045 by limiting the impact of transmission rates on core ratepayers. The incorporation of TURN's adder proposal into the settlement limits the impact of new local transmission facilities on core rates until the facilities are actually constructed and placed into service. In addition, gas storage rates remain at the 2007 level throughout the 2008 through 2010 period covered by the settlement agreement.

### **5.1. Contributions of Other Parties**

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 their participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the commission order.

TURN acknowledges that the Division of Ratepayer Advocates (DRA) and TURN were the only parties out of the 31 active parties who primarily represented the interests of PG&E's bundled core customers. TURN contends

that its participation did not duplicate that of DRA because the two coordinated their participation. TURN took the lead on local transmission and gas storage issues, while DRA focused on the backbone transmission issues.

Based on the representation of TURN that it coordinated its participation with DRA, and the statements in Exhibit 1 about the compromises in the settlement agreement, we find that TURN's positions did not duplicate the efforts of DRA.

Based on TURN's activities in this proceeding, as reflected in D.07-09-045, we conclude that TURN made substantial contributions to D.07-09-045.

## 6. Reasonableness of Requested Compensation

TURN requests \$48,305 for its participation in this proceeding, as follows:

ITEM	AMOUNT
Attorney Services	\$48,180
Attorney Travel Expenses	\$ 122
Photocopying Costs	\$ 3
Total Expenses Claimed	\$48,305

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.

### 6.1. 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.

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.

## 6.2. Hourly Rates

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.

At the time TURN filed its compensation request, the 2006 hourly rates that TURN requests for its attorneys were previously approved by the Commission in the decisions as set forth in the following table:

Name	2006 Rate
Michel P. Florio	\$485 - D.06-11-031
Marcel Hawiger	\$280 - D.06-10-018

For Michel Florio's 2007 rate, TURN requests an hourly rate of \$525. This rate represents the 3% cost-of-living adjustment (COLA) for 2007 as adopted by the Commission in D.07-01-009, as well as the 5% step increase that was authorized in D.07-01-009, rounded to the nearest \$5 increment. TURN previously requested an hourly rate of \$500 for a minimal number of Florio's hours in 2007 in R.05-12-013, which was approved in D.07-05-043. TURN points out, however, that its request in R.05-12-013 did not include a request for a 5% step increase, even though D.07-05-043 stated that the 2007 hourly rate included the 3% COLA and the 5% step increase. TURN is requesting in this compensation request that Florio's 2007 hourly include both the COLA, which

we already approved, and the step increase.<sup>4</sup> After our review of the 2007 hourly rate approved for Florio in D.07-05-043, and consistent with D.07-01-009, we approve of the 5% step increase up to the maximum rate for attorneys with at least 13 years of experience. A 2007 hourly rate for Florio of \$520.00 is adopted here.

For Marcel Hawiger's 2007 rate, TURN requests an hourly rate of \$300. This rate represents the 3% COLA for 2007 as adopted by the Commission in D.07-01-009, as well as the 5% step increase that was authorized in that decision, rounded to the nearest \$5 increment. At the time TURN's compensation request was filed, TURN had a pending compensation request in A.05-12-002 that requested a 2007 hourly rate of \$300 for Hawiger. In a recent decision, D.07-12-026, we approved a 2007 hourly rate of \$300 for Hawiger and will adopt that hourly rate in this decision as well.

### **6.3. 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.

TURN points out that due to the settlement in this proceeding, it is very difficult to establish a specific dollar amount of savings from the adoption of any one party's position. However, in the absence of the settlement, PG&E would

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<sup>4</sup> D.07-01-009 also provides that the step increases may not result in a rate that exceeds the maximum rate for that level, and sets the maximum rate for attorneys with 13 and more years of experience at \$520.00. (D.07-01-009, pp. 6 & 8.)

have requested rates that are higher by a cumulative total of \$74 million over the three-year period. TURN contends that although an exact amount of these rate savings cannot be attributed directly to TURN, its efforts were productive from the perspective of ratepayers.

We find that TURN's participation in this proceeding was productive, and bears a reasonable relationship to the benefits that ratepayers will realize, as compared to the amount of compensation that TURN is seeking in this compensation request.

#### **6.4. Direct Expenses**

The cost breakdown and explanation in the compensation request demonstrates that these direct expenses are commensurate with the work performed, and we find these costs to be reasonable.

### **7. Award**

We award TURN \$47,984.00 for its substantial contributions to D.07-09-045.

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 February 2, 2008, the 75<sup>th</sup> day after TURN filed its compensation request, and continuing until full payment of the award is made.

The award is to be paid by PG&E 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.

#### **8. Waiver of Comment Period**

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

#### **9. Assignment of Proceeding**

Timothy Alan Simon 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's positions did not duplicate the efforts of DRA.
3. TURN made a substantial contribution to D.07-09-045 as described herein.
4. TURN requested hourly rates for its representatives, as adjusted herein that are reasonable when compared to the market rates for persons with similar training and experience.
5. TURN requested related expenses that are reasonable and commensurate with the work performed.
6. The total of the reasonable compensation is \$47,984.00.
7. 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 expenses, as adjusted herein, incurred in making substantial contributions to D.07-09-045.
2. TURN should be awarded \$47,984.00 for its contribution to D.07-09-045.
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 \$47,984.00 as compensation for its substantial contributions to Decision 07-09-045.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric 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 February 2, 2008, the 75<sup>th</sup> 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. This proceeding is closed.

This order is effective.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0709045	
<b>Proceeding(s):</b>	A0703012	
<b>Author:</b>	ALJ Wong	
<b>Payer(s):</b>	Pacific Gas and Electric Company	

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	11/19/07	\$48,305	\$47,984.00	No	Adjustment of an hourly rate

## Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$280	2006	\$280
Marcel	Hawiger	Attorney	The Utility Reform Network	\$300	2007	\$300
Michel	Florio	Attorney	The Utility Reform Network	\$485	2006	\$485
Michel	Florio	Attorney	The Utility Reform Network	\$525	2007	\$520

(END OF APPENDIX)