

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

June 13, 2002

**H-7a from 6/6/2002  
Agenda ID #680**

TO: PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL.

This is the draft alternate decision of Commissioner Henry Duque. It will be on the Commission's agenda along with the draft decision of Administrative Law Judge DeBerry at the next regular meeting (currently scheduled for June 27, 2002). The Commission may act then, or may postpone action until later.

When the Commission acts on the draft alternate decision, the Commission may adopt all or part of it as written, amend or modify it, or set it aside and prepare the Commission's own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft alternate decision as provided in Rule 77.6(d) of the Commission's Rules of Practice and Procedure, except that comments shall be filed and served no later than June 20, 2002. There will be no reply comments. In this proceeding, parties' comments may not exceed 15 pages. Finally, comments must be served separately on Commissioner Duque and, for that purpose, I suggest hand delivery, electronic mail, overnight mail or other expeditious method of service.

/s/ STEVE KOTZ for  
Carl K. Oshiro, Interim Chief  
Administrative Law Judge

CKO:hkr

Attachment

**Decision DRAFT ALTERNATE DECISION OF COMMISSIONER  
DUQUE (Mailed 6/13/2002)**

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

Application of Southern California Edison Company (E 338-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 grants in part the Request for Compensation by The Utility Reform Network (TURN). TURN is awarded 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. TURN is denied compensation for its participation in the federal district court proceedings initiated by Southern California Edison (Edison) and Pacific Gas & Electric (PG&E).

## 1. Background

TURN requests compensation in the amount of \$574,584.45. TURN's compensation request covers its contributions to several Commission decisions at the heart of the energy crisis as well as federal district court proceedings. As more fully discussed below, at least \$279,580.97 of the compensation requested is for its contributions to the federal district court proceedings.<sup>1</sup>

In the Commission decisions, adopted during different phases, we addressed the requests of PG&E and 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.

---

<sup>1</sup> The \$279,580.97 consists of (1) the portion of TURN's request associated with the time billed by Michael Strumwasser, Frederic Woocher, Harrison Pollack, Johanna Shargel and associated outside counsel expenses; and (2) the time billed by Robert Finkelstein and Michael Florio for the federal district court litigation as identified in the summary of attorney hours.

- 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.<sup>2</sup> 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

---

<sup>2</sup> All statutory references are to the Public Utilities Code.

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 filed its compensation request on July 16, 2001. No party filed an initial response to the TURN request. After the proposed draft decision of Administrative Law Judge (ALJ) DeBerry was issued, Edison timely filed comments opposing an award of compensation for the federal district court proceedings.

## **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<sup>3</sup> planned participation and an itemized estimate of the

---

<sup>3</sup> 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

*Footnote continued on next page*

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 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

---

D.96-09-040.) In today’s decision, as in the statute, the terms “customer” and “intervenor” are used interchangeably.

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. Contribution to Federal District Court Proceedings**

TURN participated in federal district court proceedings<sup>4</sup> and requests compensation for this work. Edison objects to this portion of TURN's request. Edison contends that Section 1801, et seq., limits intervenor compensation to the reasonable costs of participating in Commission proceedings. Alternatively, Edison contends that Section 1802(a) limits compensation to the costs of obtaining judicial review of a Commission decision in the federal district court. Edison notes that TURN did not file either lawsuit or a petition for review in the federal district court. TURN responds that its participation in the federal district

---

<sup>4</sup> Southern California Edison v. Lynch, et al., Case No. 00-12056-RSWL (Mcx), United States District Court for the Central District of California (filed November 13, 2000); Pacific Gas & Electric Company v. Lynch, et al., Case No. CV 00-4128 (SBA), United States District Court for the Northern District of California (filed November 8, 2000).

court proceedings was necessary to ensure that the Commission could address the merits of the issues in decisions covered by the present application.

Section 1803 appears to require that TURN have incurred the costs in a “hearing” before the Commission or in a Commission “proceeding.” That section limits the award to “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 Section 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.” While not so separately defined, the sole statutory reference to “hearing” is in the context of the Commission adopting an order or decision. Section 1803 contains a “requiremen[t]” that the participation in the “hearing” make “a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.”<sup>5</sup>

The Legislature obviously intended compensation for all types hearings before the Commission as well as other Commission proceedings. Indeed, the stated purpose of Section 1801, et seq., is to compensate customers for their reasonable costs of participating in any type of proceedings before the Commission. Section 1801 states, in pertinent part:

“The purpose of this article is to provide compensation for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention *in any*

---

<sup>5</sup> Pub. Util. Code § 1803(a).

*proceeding of the commission.”<sup>6</sup>*

Section 1801.3 further states that “[i]t is the intent of the Legislature that: (a) The provisions of this article shall apply to all formal proceedings of the commission. . .” Yet Section 1802(a) also defines “[c]ompensation” to include the fees and costs “of obtaining judicial review, if any.” As correctly pointed out by TURN in its comments, judicial review is necessarily before an entity other than the Commission.

To interpret this statutory language, the Commission must ascertain “the intent of the legislature so as to effectuate the purpose of the law.” (California Teachers Assn. v. Governing Bd. of Rialto United School Dist. (1997) 14 Cal.4<sup>th</sup> 627, 632.) To determine the legislature’s intent, we “scrutinize the actual words of the statute giving them a plain and common sense meaning.” (People v. Vallodoli (1996) 13 Cal.4<sup>th</sup> 590, 597.) We may consider “the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose.” (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4<sup>th</sup> 1133, 1147.)

Applying these principles requires the Commission to utilize the plain and common sense meaning of the phrase “obtaining judicial review.” Consistent with the plain language, we have previously expressed our policy to deny compensation for outside proceedings which do not directly seek judicial review of a Commission decision.

Most recently, in D.99-04-052, the Commission denied a request for compensation for the failure to comply with the notice requirements of Section

---

<sup>6</sup> Pub. Util. Code § 1801. (Emphasis added.)

1804(a). The Commission went on to address the compensation requested for a federal writ of review:

“The federal lawsuit did not directly challenge a decision in this proceeding. Accordingly, work on the lawsuit does not qualify for compensation, consistent with our policy expressed in Decision No. 98-12-048 and Decision No. 97-05-040.” (D.99-04-052, *mimeo*, p. 4.)

The Commission similarly denied compensation for participation in Federal Energy Regulatory Commission (FERC) proceedings. In the electric industry restructuring docket, R.94-04-031 and I.94-04-032, TURN requested compensation for its participation in matters relating to the development of the Independent System Operator and The Power Exchange. (D.98-10-030, *mimeo*, pp. 18, 23.) TURN acknowledged that “direct participation in a FERC proceeding is not compensable under California’s intervenor compensation statutes.” (TURN Request for Compensation in R.94-04-031, July 7, 1997, p. 11.) The Commission agreed that such participation involved proceedings clearly beyond the limitations of Section 1802(f):

“We will not compensate TURN for the preparation of FERC intervention, for that activity is not compensable under the statute. (See § 1802(f) and (h))” (D.98-10-030, *mimeo*, p. 23.)

The Commission also followed this policy in D.97-06-062. The Commission stated:

“[C]ustomer advocates cannot qualify, under existing California statutes (PU Code § 1801 et seq.), for intervenor compensation following their successful participation in federal proceedings even though their efforts may benefit California customers.” (D.97-06-062, *mimeo*, p. 2.)

And finally, in D.98-11-014, TURN even voluntarily omitted attorney hours and costs associated with its participation in federal court cases. This

resulted in an approximately \$20,000 reduction to its intervenor compensation request. (D.98-11-014, *mimeo*, p. 11.)

In the instant case, we likewise cannot recognize TURN's expenses for participation in the federal district court as part of its intervenor compensation request. TURN did not incur its costs to "obtai[n] judicial review" in the federal district court proceedings, as required by Section 1802(a). TURN did not file a petition for review or lawsuit in the federal district court. TURN intervened as a defendant in the federal district court proceedings and opposed the federal lawsuit. As noted by Edison in its comments, "[o]nly the petitioner incurs costs to 'obtain' judicial review; those who intervene on the Commission's side are seeking to prevent, not to obtain, judicial review."

Moreover, the federal district court proceedings did not involve direct review of a Commission decision. Edison's federal lawsuit did not challenge the Commission's authority to rule on the TURN accounting proposal. Edison did not ask the federal court to enjoin Commission proceedings relating to the TURN accounting proposal. TURN's worked involved an attempt to obtain a dismissal based on various jurisdictional theories in addition to discovery and other motion work unrelated to the TURN accounting proposal.

It is not for the Commission to now invade the Legislature's province by redistributing fees in the manner requested by TURN. We are not free to fashion new rules modeled after the "Private Attorney General" fee statute, Code of Civil Procedure § 1021.5 or some other statute. We likewise are not free to award compensation in certain outside proceedings but not in others, depending on our assessment of the importance of the public policies involved or the intervenor's choice (or lack thereof) of forums.

The Commission does not have authority to expand, beyond the limitations of Section 1801, et seq., the proceedings or participation for which intervenor compensation can be awarded. Section 1801, et seq., is the sole authority for the Commission to award intervenor compensation. (Consumers Lobby Against Monopolies v. Public Utilities Com. (1979) 25 Cal.3d 891.) “Section 701 implies no regulatory authority to award fees and participation costs. If any doubt remained on that score, the Legislature, by adopting explicit, limited fee rules for the period beginning January 1, 1985, has foreclosed the notion that an additional implied authority also exists.” (Southern Cal. Gas Co. v. Public Utilities Com. (1985) 38 Cal.3d 64.)

By this decision, we do not seek to deter TURN or other intervenors from participating in outside proceedings. This outcome is compelled by the particular facts of this case. We need not address below whether TURN made a substantial contribution to the federal district court proceedings.

#### **4. Contribution to Commission Proceedings**

Under Section 1802(h), a party may make a substantial contribution to a Commission 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.<sup>7</sup>

---

<sup>7</sup> 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

*Footnote continued on next page*

**A. 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.

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.

**B. 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

---

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.

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.

## 5. 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
				<b>Subtotal</b>	=	<b><u>\$264,080.00</u></b>

### 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
				<b>Subtotal</b>	=	<b><u>\$323,581.47</u></b>

### 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
				<b>JBS Subtotal</b>	=	<b><u>\$45,130.62</u></b>

### 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 <sup>8</sup>		\$531.25
Phone costs		\$292.61
Lexis charges		\$343.19
	<b>Subtotal</b>	= \$16,342.86
	<b>TOTAL</b>	<b><u>\$649,134.95</u></b>

### A. 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

---

<sup>8</sup> This fee reflects limited consultations (4.25 hours) with economist Ian Goodman. His hourly rate (\$125) has been approved previously by the Commission.

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.

### **B. 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.

### **C. 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 <sup>9</sup>	315 <sup>10</sup>	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

---

<sup>9</sup> 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.

<sup>10</sup> 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 ( $\$280 \times 1.1 = \$308$ , rounded to \$310) and Florio's rate will be \$350, as requested ( $\$315 \times 1.1 = \$346.50$ , rounded to \$350).

Attorneys Woocher and Strumwasser have not previously appeared before this Commission but represented TURN in the federal district court proceedings. 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	\$155	=	\$6,393.75
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	\$180	=	\$18,765.00
				<b>Subtotal</b>	=	<b><u>\$255,471.25</u></b>

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
				<b>Subtotal</b>	=	<b><u>\$256,390.97</u></b>

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
				<b>JBS Subtotal</b>	=	<b><u>\$45,130.62</u></b>

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
				<b>Subtotal</b>	=	\$16,342.86
				<b>TOTAL</b>		<b><u>\$573,335.70</u></b>

**D. 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.

**6. Award**

We award TURN \$293,754.73. Our calculation is based on the hourly rates described above less the \$279,580.97 for the federal district court proceedings.

We assess responsibility for payment equally among PG&E and Edison. Consistent with previous Commission decisions, we order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 11, 2001 (the 75<sup>th</sup> 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.

**7. Comments on Draft Alternate Decision**

This draft alternate decision was circulated for public review and comment. Comments were received on \_\_\_\_\_.

**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.
6. \$279,580.97 of the requested compensation is for contributions to the federal district court proceedings.
7. TURN did not file a lawsuit or a petition for review of a Commission decision in the federal district court.
8. TURN intervened as a defendant in the federal district court proceedings.
9. The Commission did not act on the TURN accounting proposal until it issued D.01-03-082 on March 27, 2001.

**Conclusions of Law**

1. As to the Commission proceedings, TURN has fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded 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. Public Utilities Code § 1802(a) does permit compensation for the costs of obtaining judicial review.

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 \$293,754.73 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 \$146,877.37, 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.

This order is effective today.

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