

Decision 09-09-028 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of San Diego Gas & Electric Company (U902G), Southern California Gas Company (U904G), and Pacific Gas and Electric Company (U39G) to Reallocate the Costs of Natural Gas Public Purpose Programs and Other Mandated Social Programs Among Customer Classes.

Application 07-12-006
(Filed December 11, 2007)

**DECISION AWARDING THE UTILITY REFORM NETWORK
FOR ITS SUBSTANTIAL CONTRIBUTION TO DECISION 09-03-024**

Claimant: The Utility Reform Network	For contribution to D.09-03-024
Claimed (\$): \$67,477.30	Awarded (\$): \$67,477.30
Assigned Commissioner: Timothy Alan Simon	Assigned ALJ: Michael J. Galvin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	The decision denies the joint request of San Diego Gas & Electric Company, Southern California Gas Company and Pacific Gas and Electric Company to change the cost allocation methods by which their natural gas customers are charged for the costs of their public purpose programs from the various cost allocation methods currently in use to a single cost allocation method.
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B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	February 28, 2008	Yes
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	April 1, 2008	Yes
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.07-12-006	Yes
6. Date of ALJ ruling:	April 23, 2008	Yes
7. Based on another CPUC determination (specify):	N/A	
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.07-12-021	Yes
10. Date of ALJ ruling:	April 18, 2008	Yes
11. Based on another CPUC determination (specify):	N/A	
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.09-03-024	Yes
14. Date of Issuance of Final Decision:	3/17/2009	Yes
15. File date of compensation request:	5/18/2009	Yes
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059) (For each contribution, support with specific reference to final or record.)

Contribution	Citation to Decision or Record (completed by Claimant)	Showing Accepted by CPUC
<p>1. (BC) The utilities argued that the Commission should adopt EPBR allocation for PPP costs because it would support the California economy and the competitiveness of California businesses. The proponents of the EPBR method argued that the cost of doing business in CA is higher than other states and places CA business at a competitive disadvantage. While discussing the CA business climate in D.09-03-024, the Commission specifically cited to facts presented in TURN’s testimony. First, the Commission found that the loss of manufacturing jobs in CA did not, by itself, demonstrate that the loss of jobs resulted from the high cost of doing business in this state. The Commission came to this conclusion because of TURN’s testimony (Exh. 52, Testimony of James Weil), which showed that United States as a whole lost 13.9% of its manufacturing jobs over the same time period.</p>	<p>D.09-03-024, p. 8. <i>See also</i> D.09-03-024, p. 9, fn 15 for citation to TURN testimony.</p>	<p>Yes</p>
<p>2. (BC) The Commission found that there is no dispute that the cost of doing business in California is higher than other states. In making this determination, the Commission specifically cited to TURN’s testimony and facts provided therein.</p>	<p>D.09-03-024, p. 12. <i>See also</i> D.09-03-024, p. 12, fn. 25 for citation to TURN’s testimony.</p>	<p>Yes</p>
<p>3. (Tax) The utilities and their supporters argued that the EPBR method was the best way to equitably</p>	<p>D.09-03-024, pp. 15-17. “The first flaw is the applicant’s assumption that if the state funded</p>	<p>Yes</p>

<p>spread the costs of PP programs across all customers. The utilities undertook a reality check of their proposed EPBR method by correlating their funding method with how the California General Fund derives its revenue. The Commission found that the utilities’ argument contained major flaws and that the applicants had not substantiated that the California General Fund should be viewed as the standard by which the fairness of a cost allocation method of the PPP surcharges could or should be measured.</p> <p>In making this determination, the Commission fully relied on TURN’s testimony (Exh. 50, Testimony of Lenny Goldberg). The Commission referred to TURN’s testimony, which refuted the utilities’ argument that, had the state funded these programs, such funding would come from the General Fund.</p>	<p>these PP programs such funding would come from the General Fund. As testified to by TURN, there are many examples of social programs financed from fees or special funds that do not reflect a general tax distribution.”</p>	
<p>4. (Tax) The Commission also relied on TURN’s testimony when it found that the utilities’ conclusion that residential customers provide 63% of the General Fund revenue and businesses 37% was a flawed.</p>	<p>D.09-03-024, pp. 16-17. “The second major flaw in their reality check is their conclusion that residential customers provide 63% of the General Fund revenue and businesses 37%...TURN identified other General Fund revenue sources such as rents and royalties, farm income, capital asset sales, and interest and dividends that cannot be so easily allocated.”</p>	<p>Yes</p>

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

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding? (Y/N)	Y	Y
b. Were there other parties to the proceeding? (Y/N)	Y	Y
c. If so, provide name of other parties: Consumer Federation of California (CFC), Disability Rights Advocates		Yes

<p>(DisabRA), Latino Issues Forum (LIF), California League of Food Processors, The Agricultural Energy Consumers Association, Indicated Producers, California Manufacturers & Technology Association</p>	
<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: The parties protesting this application (TURN, DRA, LIF, CFC, and DisabRA) worked closely together to reduce duplication of effort and present a united front against this application. The parties participated in several conference calls to discuss cooperation and strategy and ultimately filed joint opening and reply comments on the Proposed Decision. In developing individual litigation strategies, however, each party focused on different issues and, therefore, no duplication of effort occurred. TURN, for example, was the only party to present significant evidence regarding the California business climate and was the only party to present any evidence against the applicants’ General Fund “reality check” argument. CFC focused on the likelihood of manufacturers leaving the state, while DisabRA focused on the impact of increasing residential CARE rates on disabled and low-income customers. Therefore, the Commission should find that there was no substantial duplication that might warrant a reduction in the award of compensation.</p>	<p>Yes</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

(completed by Claimant except where indicated)

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

<p>Concise explanation as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)</p>	<p>CPUC Verified</p>
<p>TURN’s arguments and the facts presented in its testimony significantly contributed to the rejection of the utilities’ request to reallocate PPP surcharges. Assigning a specific dollar value to TURN’s participation in this proceeding, however, may be difficult because the reallocation of PPP surcharges would have effected residential customers on an on-going basis while the costs of Public Participation Programs are likely to change in the future. At the time of the application, however, the utilities’ proposal would have shifted significant costs from large business customers onto the residential class - \$65.2 million for SoCalGas, \$27.2 million for PG&E, and \$7.9 million for SDG&E. (Exh. 51, p. 4). Therefore, TURN’s participation directly resulted in protecting residential customers from such a result. The cost of TURN’s participation (\$67,507.30) was therefore significantly less than the benefits realized from TURN’s participation.</p>	<p>Yes</p>

B. Specific Claim:

Claimed						CPUC Award			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Bob Finkelstein	2007	1.25	435	D.07-12-026, p. 29	543.75	2007	1.25	435	543.75
Bob Finkelstein	2008	1.75	470	D.08-08-027, p. 5	822.50	2008	1.75	470	822.50
Bob Finkelstein	2009	.50	470	See comment 2 in	235.00	2009	0.50	470	235.00
Michel Florio	2007	.50	520	D.08-04-027	260.00	2007	0.50	520	260.00
Michel Florio	2008	18.75	535	D.08-07-043, p.8	10,031.25	2008	18.75	535	10,031.25
Marcel Hawiger	2007	2.25	300	D.07-12-026, p. 29	675.00	2007	2.25	300	675.00
Marcel Hawiger	2008	14.75	325	D.08-08-027, p. 5	4,793.75	2008	14.75	325	4,793.75
Nina Suetake	2008	102.75	225	D.09-04-027, p. 9	23,118.75	2008	102.75	225	23,118.75
Nina Suetake	2009	5.25	225	See comment 2	1,181.25	2009	5.25	225	1,181.25
Subtotal:					\$41,661.25	Subtotal:			\$41,661.25
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Lenny Goldberg	2008	31.00	200	See comment 3 in	6200	2008	31.00	200	6,200.00
James Weil	2008	58.70	300	D.09-01.034, p. 14	17,610	2008	58.70	300	17,610.00
Subtotal:					\$23,810.00	Subtotal:			\$23,810.00
INTERVENOR COMPENSATION CLAIM PREPARATION (1/2 rate)									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Nina Suetake	2008	0.75	112.50	D.09-04-027, p. 9	84.38	2008	0.75	112.50	84.38
Nina Suetake	2009	13.00	112.50	See Comment 2	1,462.50	2009	13.00	112.50	1,462.50
Subtotal:					\$1,546.88	Subtotal:			\$1,546.88
COSTS									
#	Item	Detail			Amount	Amount			
	Travel	Expert witness travel (327 miles @ 58.5 cents)			191.30	191.30			
	Lexis research	Research background material and cases			78.05	78.05			
	Phone	Phone calls related to the proceeding			0.83	0.83			
	Postage	To send files/documents to witnesses			30.00	30.00			
	Copies	Photocopy documents			158.99	158.99			
Subtotal:					\$459.17	Subtotal:			\$459.17
TOTAL REQUEST \$:					\$67,477.30	TOTAL AWARD \$:			\$67,477.30

**C. Attachments or Comments Documenting Specific Claim:
(not attached to final Decision)**

Attachment or Comment #	Description/Comment
Attachment 1	Certificate of Service
Attachment 2	TURN Hours related to D.09-03-024 (including TURN attorney and expert consultant hours)
Attachment 3	TURN Expenses related to D.09-03-024
Comment 1	<p>TURN's participation included the efforts of attorneys Finkelstein, Hawiger, Florio, and Suetake. Ms. Suetake acted as the lead attorney on this proceeding, as reflected in her number of hours. Mr. Hawiger initially worked on this proceeding jointly with Ms. Suetake before Ms. Suetake took over as lead and assisted in providing coverage while Ms. Suetake was unavailable. Mr. Hawiger secured expert witnesses for TURN and also provided assistance to Ms. Suetake by explaining aspects of natural gas policy which she was unfamiliar with. Mr. Finkelstein provided supervisory assistance on litigation strategy. Mr. Florio largely participated in this proceeding as an expert witness.</p>
Comment 2	<p>For work conducted in 2009 by Nina Suetake and Bob Finkelstein, TURN is requesting that the Commission apply their authorized 2008 rates (D.09-04-027). TURN reserves the right to request different rates in the future for work completed in 2009 by Finkelstein and Suetake.</p>
Comment 3	<p>TURN seeks an hourly rate of \$200 for work performed in 2008 by Lenny Goldberg on tax-related matters raised by the utilities' applications and testimony. Mr. Goldberg has been Executive Director of California Tax Reform Association since 1985. In that capacity, he has been directly involved with virtually all major tax issues before the California Legislature, the Board of Equalization, and Franchise Tax Board. He testifies regularly at hearings of the California Assembly and Senate Revenue and Taxation Committees and hearings of the Board of Equalization and Franchise Tax Board on various issues. Mr. Goldberg is also the principal in a consulting and advocacy firm that specializes in public interest clients, including TURN. A copy of his statement of qualifications is available as Attachment A to the testimony he sponsored in this proceeding.</p> <p>This is the first time Mr. Goldberg has appeared before the Commission as an expert witness on tax-related matters. With his decades of experience on such matters, the applicable range under D.08-04-010 is the \$155-\$390 range for experts with more than thirteen years experience. His credentials and experience compare favorably with those of other experts for whom the Commission has approved rates of \$200 or higher for work in 2008 or earlier. For example, in D.08-05-015, the Commission awarded a \$200 rate for work performed in 2006 by Michael Karp, an expert in low income energy efficiency programs with a similar amount of experience. In D.09-03-018, the Commission adopted a \$200 hourly rate for work performed in 2007 by Neal Casper, an expert on architectural access for people with disabilities whose credentials include nine years as a construction project manager. And in D.08-09-036, the Commission</p>

	adopted a \$225 hourly rate for work performed in 2007 by Dr. Gregory Morris of Green Power Institute. Dr. Morris has a doctorate in a related field (as compared to Mr. Goldberg’s attainment of the equivalent of a Masters Degree in Economics as a PhD candidate).
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D. CPUC Adoptions, Disallowances & Adjustments:

Item	Reason
Goldberg’s 2008 Hourly Rate	This is Goldberg’s first appearance before the Commission as an expert witness on tax-related matters. Goldberg has been Executive Director of California Tax Reform Association since 1985. In that capacity, he has been involved with all major tax issues before the California Legislature, the Board of Equalization, and Franchise Tax Board. He testifies regularly at hearings of the California Assembly and Senate Revenue and Taxation Committees and hearings of the Board of Equalization and Franchise Tax Board on various issues. TURN’s request for Goldberg’s 2008 rate of \$200 is within the range of \$155-\$390 under D.08-04-010 for experts with more than thirteen years experience. Given Goldberg’s background and experience, we find the requested rate reasonable and adopt it here.
Travel Costs	Our past practice has been to disallow time and costs which were deemed to be related to “routine commuting.” In this instance, TURN requests reimbursement of costs for mileage related to Weil’s travel as an expert, but makes no request for a reimbursement of his travel time. In this instance, we depart from our past practice and approve these costs as being reasonable.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim (Y/N)?

N

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6)) (Y/N)?

Y

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision 09-03-024.
2. The claimed fees and costs are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$67,477.30.

CONCLUSION OF LAW

1. The claim satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$67,477.30.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company shall pay claimant the total award in proportion to their respective 2008 jurisdictional natural gas revenues. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 1, 2009, the 75th day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This proceeding remains open to address other related matters.
5. This decision is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX
Compensation Decision Summary Information

Compensation Decision:	D0909028	Modifies Decision? N
Contribution Decision(s):	D0903024	
Proceeding(s):	A0712006	
Author:	ALJ Galvin	
Payer(s):	San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Disallowances
The Utility Reform Network	5/18/2009	\$67,477.30	\$67,477.30	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Bob	Finkelstein	Attorney	The Utility Reform Network	\$435	2007	\$435
Bob	Finkelstein	Attorney	The Utility Reform Network	\$470	2008	\$470
Bob	Finkelstein	Attorney	The Utility Reform Network	\$470	2009	\$470
Michel	Florio	Attorney	The Utility Reform Network	\$520	2007	\$520
Michel	Florio	Attorney	The Utility Reform Network	\$535	2008	\$535
Marcel	Hawiger	Attorney	The Utility Reform Network	\$300	2007	\$300
Marcel	Hawiger	Attorney	The Utility Reform Network	\$325	2008	\$325
Nina	Suetake	Attorney	The Utility Reform Network	\$225	2008	\$225
Nina	Suetake	Attorney	The Utility Reform Network	\$225	2009	\$225
Goldberg	Lenny	Expert	The Utility Reform Network	\$200	2008	\$200
Weil	James	Expert	The Utility Reform Network	\$300	2008	\$300

(END OF APPENDIX)