

Decision 10-02-008 February 4, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) 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 (U39E) to Adopt a Rate Stabilization Plan.	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)

**DECISION AWARDING INTERVENOR COMPENSATION
(HOURLY RATES FOR OUTSIDE COUNSEL USED BY INTERVENOR IN
OBTAINING JUDICIAL REVIEW)**

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**DECISION AWARDING INTERVENOR COMPENSATION
(HOURLY RATES FOR OUTSIDE COUNSEL USED BY INTERVENOR IN
OBTAINING JUDICIAL REVIEW)**

1. Summary

This decision resolves an outstanding issue from a request for compensation by The Utility Reform Network (TURN) for its work in obtaining judicial review in these consolidated proceedings. On remand from the California Court of Appeal (Second Appellate District), and relying in part on a settlement between TURN and certain utilities, the decision adopts increased hourly rates for outside counsel used by TURN for this work. Because the decision approves a settlement under which TURN agrees to forego certain interest that would otherwise be due, the decision does not include interest on the award calculated from the increased hourly rates.

Neither the court's decision nor today's decision makes any change to the hourly rate schedules that we have adopted and consistently applied for several years in determining reasonable hourly rates for intervenor's in-house staff and outside representatives. As the court noted, these schedules relate to the practice of administrative law, and specifically to litigation services before this Commission.¹ Only in the highly unusual circumstances underlying today's decision will an intervenor's use of other kinds of litigation services be compensable under the intervenor compensation statute, and thus suggest consideration of an alternative hourly rate schedule.

¹ *The Utility Reform Network v. Public Utilities Commission* (2008) 166 Cal. App. 4th at 522, 537 (*hereafter*, *TURN v. PUC*).

This proceeding remains open to consider a later request for compensation by TURN concerning its judicial review work subsequently performed in these consolidated proceedings.²

2. Background

California's electricity crisis in 2000 prompted many proceedings before this Commission, and these in turn prompted much litigation before state and federal courts at all levels. The Utility Reform Network (TURN) participated vigorously here and in the courts. The compensation award we deal with today relates to some of that participation. (For a fuller description of relevant events preceding this award, *see* Appendix A to today's decision, which excerpts the "Background" summarized in Decision (D.) 05-04-049.)

Specifically, in D.05-04-049, we addressed TURN's compensation request concerning the "Post-Transition Ratemaking" dockets (where we had dealt with post-rate freeze recovery of rate freeze costs) and the "Rate Stabilization Plan" dockets (which include the two utility applications and the TURN petition captioned above). We granted the compensation request in part and denied it in part. Among the grounds for partial denial was our finding that TURN had not justified setting hourly rates for its outside counsel on a different basis from that used for TURN's staff counsel.

TURN applied for rehearing of D.05-04-049. TURN challenged, among other things, our finding regarding hourly rates for TURN's outside counsel. In

² Today's decision on outside counsel rates resolves the only issue remaining from TURN's June 2004 request. TURN's later request (filed in February 2009) seeks compensation for judicial review work performed in these proceedings after the period covered by the original award in (Decision 05-04-049) responding to the earlier request.

D.07-03-017, we modified D.05-04-049 but the modifications did not affect the award, and we denied rehearing of the decision as modified.

TURN then sought and obtained judicial review of D.05-04-049 and D.07-03-017 in the California Court of Appeal. The court in *TURN v. PUC* affirmed our decisions with the sole exception of the hourly rates that we used for TURN's outside counsel. We now reconsider those rates, as required by the court, and adopt modified rates. We base these rates for TURN's outside counsel on the prior record in these proceedings and on statements filed by the three largest California investor-owned electric utilities in support of a settlement they reached with TURN on this hourly rate issue.³

Using the modified rates, we now modify our original award of compensation to TURN in D.05-04-049, the primary decision reviewed by the court.

3. Legal and Factual Issues Regarding Outside Counsel Rates

3.1. Legal Standard for Setting Hourly Rates

The Public Utilities Code comprehensively governs the Commission's intervenor compensation program, including who is eligible for awards, what activity is compensable, and how an award is calculated. *See generally* Pub. Util. Code §§ 1801-1812. (All subsequent statutory citations are to the Public Utilities Code.) In brief, an intervenor that the Commission has determined (1) to be

³ TURN's original request for compensation was filed on June 18, 2004; TURN filed errata to this request on June 21, 2004. In D.05-04-049, we found that TURN had satisfied the various prerequisites to be eligible for an award of compensation (e.g., customer status, significant financial hardship, timeliness of filings). We do not need to repeat the findings or the underlying analysis here.

eligible, and (2) to have substantially contributed to a Commission decision, is entitled to an award of compensation to the extent of the intervenor's reasonably incurred costs and fees related to its substantial contribution. (*Id.*)

A key component in determining the reasonableness of an intervenor's request for fees is the hourly rate at which those fees were calculated. Section 1806 guides our review of fees and, by necessary implication, the hourly rates on which they are based. This statute requires us to "take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The compensation award may not, in any case, exceed the comparable rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services." (*Id.*, emphasis added.)

3.2. TURN's Showing and the Commission's Initial Response

In recent years, the Commission has created, and adjusted annually, hourly rate schedules that it applies in calculating awards to intervenors.⁴ The work for which TURN is seeking compensation was performed over several years by several individuals, so TURN requests a range of rates to incorporate annual adjustments and differences in experience among the individuals, as well as differences in services performed.

We largely granted the rates TURN requested for its in-house staff. It is our use of the same rates for TURN's outside counsel that TURN challenged.

⁴ The hourly rate schedules have relied, among other things, on data that we collected regarding rates paid by the utilities and by the Commission itself for representation on Commission matters. The court refers to these data as the Commission's "Of Counsel Survey."

Specifically, TURN argues that in setting rates for its outside counsel, we should have relied on the rates charged to outside counsel's fee-paying clients, and on the rates requested by one of the utilities' law firms from a federal bankruptcy court. Such reliance, according to TURN, supports a range of \$459 to \$550 per hour for senior outside counsel, \$333 to \$375 per hour for mid-level counsel, and \$225 to \$295 per hour for junior associates. Instead, using the same rates authorized for TURN's in-house staff at corresponding experience levels, we approved ranges of \$350 to \$470 per hour (senior), \$190 to \$200 per hour (mid-level), and \$170 to \$190 per hour (junior associate).

Our rejection of TURN's argument in D.05-04-049 and D.07-03-017 expressly discussed the first element of the hourly rate standard under Section 1806, namely, the training and experience of the representatives whose work is under consideration. For example, we noted that we had previously found the training and experience of TURN's senior in-house attorney were comparable to the training and experience of TURN's senior outside counsel. (D.05-04-049, at 20-21, citing D.02-06-070.) We had made the same finding regarding the corresponding mid-level attorneys. (*Id.*)

Our discussion of the second element of the hourly rate standard, namely the services provided by the representatives whose work is under consideration, was less clear. We merely noted that in D.02-06-070, we had "declined to set task-by-task compensation rates." (D.05-04-049, at 20.) Thus, D.05-04-049 appears not to squarely address the issues of (1) whether representations in appellate litigation before a court and in administrative litigation before this Commission involve fundamentally different services, and, if so, (2) whether those differences command different "market rates" within the meaning of Section 1806.

3.3. Direction from the Court of Appeal

On appeal from D.05-04-049, as modified by D.07-03-017, the court expressly found that advocates performing “federal trial and appellate litigation” provide different services from those provided by advocates performing administrative litigation before this Commission.⁵ The court then added:

Certainly the PUC has, as it states, “wide discretion in determining what the market rate should be based on the evidence in the record.” But it cannot ignore the unrebutted evidence in the record, and set a market rate that does not account for the difference in services offered by outside counsel experienced in federal trial and appellate litigation and those offered by practitioners before the PUC.⁶

We have no quarrel with the court’s finding that judicial litigation requires different advocacy services compared to administrative litigation.⁷ Given this finding, we had to determine on remand whether the record to that point contained sufficient information for us to adopt market rates for the judicial appellate litigation services provided by TURN’s outside counsel.

3.4. Need for Additional Information

In fact, the record to that point contained very little information relevant to one of the key elements of the legal standard for fee awards, namely, “the

⁵ *TURN v. PUC*, 166 Cal. App. 4th at 537.

⁶ *Id.*

⁷ Our statement in prior decisions (noted at the end of the immediately preceding section of today’s decision) to the effect that we decline to set “task-by-task compensation rates” does not run afoul of the court’s finding. An administrative advocate performs many different “tasks,” but each task does not constitute a separate “service” within the meaning of the statute. The statement is correct as far as it goes,

Footnote continued on next page

comparable market rate for services paid by... the public utility... to persons of comparable training and experience who are offering similar services.”

Section 1806. This limited information falls far short of the kind of “market rates” survey the statute seems to contemplate. After reviewing this information, the assigned Administrative Law Judge (ALJ) noted the following concerns:

- (1) The information in the record to date on rates paid for outside counsel services by utilities is limited to a single utility, Pacific Gas and Electric Company (PG&E), which happens not to be the utility (Southern California Edison Company (SCE)) involved in the judicial appellate litigation underlying TURN’s fee request.
- (2) The outside counsel hourly rates incurred by PG&E relate to representation in bankruptcy court, which is a highly specialized forum. Those hourly rates may, or may not, be fairly indicative of the hourly rates that utilities incur for outside counsel in the broader market of judicial litigation generally.

The ALJ’s Proposed Decision published on February 24, 2009, would have addressed these concerns by requiring a multi-year survey of outside counsel hourly rates incurred by the State’s largest utilities, two of them providers of telecommunications services.

In comments on the Proposed Decision, TURN objected to the survey as unduly burdensome and excessive in light of the limited usefulness expected of

but it does not illuminate the problem here, which is whether two services may be different although they involve some of the same tasks, for example, writing briefs.

the results.⁸ TURN also filed a settlement on May 15, 2009. The settling parties, besides TURN, were SCE, PG&E, and San Diego Gas & Electric Company (SDG&E). Under the settlement, the Commission would award TURN \$51,613, to be paid by SCE, as additional outside counsel fees. The additional fees clearly derive from the hourly rates requested by TURN, but TURN would “waive any claim to interest” on that award.⁹

The settlement recites that it “is intended to avoid further proceedings and thereby avoid costs to the respondents designated by the February 24, 2009 Proposed Decision, which are likely to exceed the amount in dispute, and a process that will produce data that has no apparent prospect for application to intervenor compensation requests in future proceedings.” (Paragraph 5 of the settlement agreement.) Also, Paragraph 14 of the settlement agreement provides, consistent with Rule 12.5, that the settlement agreement would not be precedential in any other proceeding before the Commission. (This rule and all rules cited later are part of the Commission’s Rules of Practice and Procedure.)

In light of the settlement, the ALJ withdrew the Proposed Decision but ruled that certain additional information was still needed. Specifically, the ALJ required each of the three settling utilities to file a statement on whether the

⁸ The telecommunications utilities also noted that they had not been parties to any of the captioned proceedings.

⁹ TURN had previously calculated the additional outside counsel fees as \$51,613 “representing the difference between the rates requested and rates awarded for outside counsel’s work compensated in D.05-04-049.” *See* Joint Motion to Adopt Settlement (May 15, 2009) at page 2. The calculation had been communicated to the Commission by a letter from TURN to the Commission’s General Counsel dated January 26, 2009. TURN estimates that interest on the additional fees, calculated at the three-month commercial paper rate the Commission uses for this purpose, would exceed \$7,000 as of the date of the settlement.

range of hourly rates for outside counsel incurred by TURN in judicial appellate litigation exceeds rates incurred by the utility in similar litigation.

The ALJ explained that in considering the reasonableness and lawfulness of the proposed settlement, the Commission must determine whether these rates are consistent with the “market rates” contemplated by Section 1806. After noting that the record at that point on rates paid by utilities for outside counsel was limited to a single utility (PG&E) and a single judicial forum (bankruptcy court), the ALJ stated, in essence, that the record should be supplemented before the Commission could conclude the settlement was reasonable in light of the whole record, consistent with law, and in the public interest. (*See* Rule 12.1(d).)

3.5. Statements Supporting the Settlement

Instead of the comprehensive survey that would have been required under the Proposed Decision, the ruling required limited additional information from only the three settling utilities. The crux of the additional information was simply a statement of whether the range of hourly rates for outside counsel incurred by TURN in judicial appellate litigation in this matter exceeds the outside counsel rates incurred by the utility. To ensure reasonable comparability, the ruling directed the utilities to consider only those rates incurred during roughly the same calendar years and in similar litigation. The utilities were not required to disclose the names and rates of particular counsel, but they were required to identify one or more examples of the litigation on which their respective statements were based.

Pursuant to the ruling, PG&E, SCE, and SDG&E filed their respective statements on or before July 17, 2009. Each utility states (and provides an example of comparable litigation) that the range of outside counsel rates incurred by TURN does not exceed corresponding rates incurred by the utility.

3.6. Resolution of Issues Regarding Outside Counsel Rates

Based on the record of the proceeding, as augmented by representations in the settlement and the utilities' supporting statements, we approve the settlement, albeit with some misgivings. On balance, the three main reasons supporting approval are more compelling, as we explain below.

First, we now have a convincing showing regarding TURN's requested rates for outside counsel in judicial proceedings. Before the filing of the utilities' statements, the record on outside counsel rates consisted of a single data point, derived from a bankruptcy proceeding. In contrast, the utilities' statements now confirm that TURN's requested rates are realistic, based on the utilities' own experience in the more usual type of judicial appellate litigation that sometimes ensues from Commission proceedings.

Second, we agree with the settling parties that a comprehensive market rates survey would be arduous and burdensome. We last performed such a survey several years ago; it was specific to our own proceedings, which of course is where almost all Commission-related intervenor participation occurs. To do a survey limited to the judicial forum would involve much effort solely to address a situation that accounts for a small fraction of hours claimed by intervenors.

Third, we recognize the fundamental principle that litigation must come to an end. The appellate litigation in which TURN participated (against PG&E and SCE, and at least initially in support of the Commission) started in 2000. TURN first requested compensation in 2002, and in 2003 we denied that request as premature. (*See* Appendix A to today's decision.) We awarded compensation to TURN in 2005 (D.05-04-049), and reconsidering our determination in that decision of the outside counsel rates is the issue we resolve today. In view of the

almost nine-year history preceding the settlement, it is surely time to resolve this issue.

Our misgivings cause us to emphasize that this settlement, like all settlements in our proceedings, is non-precedential.

Our primary misgiving is that we do not want our approval of the settlement to signify in any way a retreat from our commitment to setting market-based rates for intervenors' representatives. For the past several years, we have tried to adjust hourly rates periodically, uniformly, and on a broad basis. Today's decision is necessarily *ad hoc* and based on a small sample. Accordingly, the decision does not create Commission-approved fee ranges for outside counsel in judicial appellate litigation. Absent such fee ranges, the burden must fall on the intervenor to amply support and document its claim for fees in this, hopefully rare, situation.

Our second misgiving concerns the novel use of the settlement process in the context of an intervenor compensation award request. When we award compensation, including the approval of hourly rates supporting the award, we resolve a mix of factual and legal issues. A settlement, particularly if it involves all the parties and if they represent diverse interests, is often persuasive as to factual issues, but it cannot relieve the Commission of the duty to resolve legal issues. Thus, where as here an intervenor and utilities may agree on the reasonableness of a lump-sum award, the Commission still cannot skirt the issue of the hourly rates on which an award must be premised. Under the statute, any award must be based on costs and fees that the Commission finds to be reasonable. Without the utilities' supporting statements required by the ALJ, this award could not stand.

We also observe that a settlement, ideally, should reflect a consensus among all the affected interests. Here, the ratepayer representative signing the settlement is TURN, and TURN obviously has a financial stake in the award that ultimately will be paid by SCE's ratepayers. Given this inherent conflict, we do not give as much weight to this kind of settlement as we generally would do to settlements where the ratepayer interest is clearly reflected.

Despite these misgivings, we find that the proposed settlement satisfies our three criteria for approval of settlements. The award is reasonable in light of the record taken as a whole. Given the utilities' statements, we consider it highly unlikely that a comprehensive market survey would disclose any significant deviation from the hourly rates of TURN's outside counsel. Even that remote possibility is offset by TURN's waiver of interest on the award, pursuant to the settlement.

Because the award is reasonable, the settlement protects the interest of utilities and their ratepayers. Also, the broad public interest is served by resolving this long dispute on reasonable terms.

Paragraph 8 of the settlement agreement provides that SCE will recover the amount of the award in rates, "consistent with the treatment of other intervenor compensation awards." Because we find this award reasonable, we consider that SCE's participation in the settlement should not affect its entitlement, under Section 1807, to recover the amount of the award in rates. We conclude that the settlement is lawful.

As noted earlier, our approval of this settlement is not precedential. However, the question remains about what effect to give the settlement within this proceeding. TURN's February 9, 2009 request for compensation is for work performed by the same outside counsel firm in the same judicial review process

but after the period covered by the original award in D.05-04-049. The firm used different personnel, in part, for the work in the later period, and the later request also reflects occasional increases to the firm's hourly rates.

We do not pre-judge the reasonableness of the firm's rates for periods and for personnel not covered in the settlement. However, we will consider the later request in light of the rate schedule we approve today. Specifically, we will consider (1) whether subsequent increases in the firm's rate schedule are reasonable, and (2) whether the hourly rates requested for personnel not covered in the settlement are reasonable in light of the training and experience of these latter personnel when compared to the training and experience of personnel covered in the settlement.

4. Award

As the result of the remand from the California Court of Appeal and the settlement approved in today's decision, we award TURN \$51,613. Under the settlement, TURN has agreed to "waive any claim to interest" on this award, which is the amount agreed to by the settling parties as additional compensation for TURN's outside counsel arising from TURN's June 2004 compensation request. Thus, we do not order interest on the award, which is to be paid by SCE as the regulated utility directly involved in the judicial litigation from which the award derives.

We remind all intervenors that Commission staff may audit their records related to an award, and that intervenors must make and retain adequate accounting and other documentation to support their claims. Records pertaining to an award of compensation must be retained for at least three years from the date of the final decision making the award.

5. 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.

6. Assignment of Proceeding

The consolidated proceedings, Application (A.) 00-11-038, A.00-11-056, and A.00-10-028, are assigned to Commissioner Michael R. Peevey and ALJ Steven Kotz.

Findings of Fact

1. TURN has satisfied the various prerequisites for eligibility to receive an award for the work covered in the request for compensation that is resolved in today's decision.
2. Representation in federal trial and appellate litigation constitutes a distinct market for legal services, distinguishable from representation in administrative proceedings such as those at this Commission.
3. The hourly rate ranges that the Commission has approved are specific to intervenors' work at the Commission. Those ranges apply to both in-house and outside counsel.
4. The hourly rates approved today for TURN's outside counsel are specific to judicial appellate proceedings. These rates have no application to work performed in Commission proceedings.
5. The hourly rates approved today for TURN's outside counsel rely on the prior record in this proceeding and on supporting statements by the three electric utilities joining with TURN in a settlement of the hourly rate issue. Each

utility states that the range of outside counsel rates incurred by TURN does not exceed corresponding rates incurred by the utility.

6. Although no comprehensive survey was performed of market rates for representation in judicial appellate proceedings, it is unlikely, in light of the statements by the settling utilities, that the survey would show any significant deviation from the hourly rates of TURN's outside counsel.

7. The proposed settlement is reasonable in light of the record taken as a whole, and is also in the public interest.

8. Under the settlement approved in today's decision, TURN is entitled to a further award of \$51,613 in compensation for work of TURN's outside counsel. Under the settlement, TURN waives interest on this further award, which resolves all remaining issues regarding TURN's June 2004 request for compensation in this proceeding. The further award should be paid by SCE as the regulated utility directly involved in the judicial litigation from which the award derives.

9. Appendix B to this decision summarizes today's award.

Conclusions of Law

1. The record of this proceeding, as augmented by the statements of the settling utilities in support of the proposed settlement, suggests that the hourly rates of TURN's outside counsel reasonably approximate the "market" rate for judicial appellate litigation services, within the meaning of Public Utilities Code Section 1806.

2. SCE's participation in the proposed settlement should not affect SCE's entitlement, under Public Utilities Code Section 1807, to collect in rates the amount of the intervenor compensation awards pursuant to the proposed settlement or otherwise authorized in today's decision.

3. The proposed settlement is lawful, reasonable in light of the record as a whole, and in the public interest. Therefore, the proposed settlement should be approved.

4. Because today's decision results in part from a settlement, and because of other circumstances discussed in the foregoing Opinion and Findings of Fact, today's decision should be limited to its facts and is non-precedential.

5. Today's decision should not affect the hourly rate ranges that the Commission has approved for intervenors' work (whether performed by in-house staff or outside representatives) in Commission proceedings.

6. SCE should pay the award ordered in today's decision.

7. TURN is not entitled to interest on the award pursuant to the settlement.

8. To ensure that payment of the award in today's decision occurs without further delay, today's decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The proposed settlement entered into by The Utility Reform Network and Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company is approved.

2. As provided in the settlement approved in Ordering Paragraph 1, The Utility Reform Network is awarded \$51,613 as additional compensation for fees of outside counsel used in obtaining judicial review.

3. Southern California Edison Company must pay the full amount of the award, \$51,613, within 30 days of the effective date of this decision.

4. Application 00-11-038, Application 00-11-056, and Application 00-10-028 remain open for consideration of the request for compensation filed by The Utility Reform Network in February 2009.

This order is effective today.

Dated February 4, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX A

Section A. - D.05-04-049

Background

These consolidated proceedings include the Post-Transition Ratemaking dockets (A.99-01-016 *et al.*) in which we addressed post-rate freeze recovery of rate freeze costs, and the Rate Stabilization Plan dockets (A.00-11-038 *et al.*) in which we addressed PG&E's and Edison's applications for emergency relief from the skyrocketing wholesale electricity prices in 2000. In the Post-Transition Ratemaking dockets, we determined that Pub. Util. Code § 368 bars utilities from recovering, through post-rate freeze rates, costs incurred during the rate freeze. (D.99-10-057, as modified by D.00-03-058.) (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.) In the Rate Stabilization Plan dockets, however, we ultimately authorized and implemented a rate increase of four cents/kWh in recognition of Edison's and PG&E's increased costs due to the extraordinary circumstances in California's wholesale power markets. (D.01-03-082.)

In November 2000, Edison and PG&E filed separate federal court actions challenging the Commission's jurisdiction to limit the utilities' recovery of their increased wholesale procurement costs.¹ TURN intervened in those actions.

The two federal lawsuits followed different procedural paths. PG&E filed for bankruptcy in April 2001, and the Commission entered into a settlement of

¹ *Edison v. Lynch et al.*, Case No. 00-12056-RSWL (Mcx), United States District Court for the Central District of California (Western Division) (filed November 13, 2000), and *PG&E v. Lynch, et al.*, Case No. CV 00-4128 (SBA), United States District Court for the Northern District of California (filed November 8, 2000).

the bankruptcy in December 2003. (See D.03-12-035.) Pursuant to the terms of the bankruptcy settlement, PG&E's federal court action will be dismissed.²

The Commission and Edison entered into a Joint Stipulation in settlement of Edison's federal lawsuit on October 2, 2001. TURN appealed the District Court's judgment affirming the settlement to the Ninth Circuit Court of Appeals. On September 23, 2002, the Ninth Circuit affirmed the District Court's judgment in part and certified several questions to the California Supreme Court regarding whether the agreement violated state law.³ On August 21, 2003, the Supreme Court answered the Ninth Circuit, concluding that the Stipulated Judgment did not violate state law.⁴

As these events were unfolding, TURN in July 2001 filed a request for compensation for the costs, among others, of the first six months of its participation in Edison's and PG&E's federal court actions. The Commission granted TURN's request 11 months later in D.02-06-070, finding that TURN had made a substantial contribution to the various decisions affecting the utilities' ability to recover their costs of wholesale power during the energy crisis. Because the federal lawsuits sought to challenge the Commission's authority to

² *PG&E v. Lynch* remains an open docket, pending resolution of an appeal of the Commission's decision approving the settlement (D.03-12-035) and of the confirmation order approving the settlement in bankruptcy court (*In re Pacific Gas and Electric Company, Debtor*, United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 01-30923 DM, Confirmation Order, dated December 22, 2003).

³ *Edison v. Lynch*, 308 F.3d 794 (9th Cir. 2002).

⁴ *Edison v. Peevey* (2003) 31 Cal.4th 781. The Ninth Circuit entered final judgment in *Edison v. Lynch* on December 19, 2003, bringing Edison's federal lawsuit to a close. (See 353 F.3d 648.)

make those decisions, the Commission found that the costs of TURN's federal court work were reasonably incurred in order to make its substantial contribution to the adopted decisions.

Edison and PG&E each applied for rehearing of D.02-06-070 on the issue of compensation for TURN's federal district court work. We denied rehearing of our order, as modified. (*See* D.03-04-034.) Edison petitioned the Second Appellate District of the California Court of Appeal for writ of review of those orders. On October 8, 2003, the court issued the writ granting review. The court ultimately rejected Edison's appeal on April 19, 2004.⁵ Sixty days after the court's decision upholding D.02-06-070 and D.03-04-034,⁶ TURN filed this request for compensation. Edison opposes TURN's request only insofar as TURN seeks an award enhancement, full compensation for time spent preparing this request, and compensation for time spent on media and outside lobbying. TURN has replied to Edison's opposition.

⁵ *Edison v. CPUC* (2004) 117 Cal. App. 4th 1039.

⁶ On November 22, 2002, TURN filed a request for intervenor compensation for its work in the federal lawsuits from mid-2001 through September 2002. The Commission denied the request without prejudice because the Commission wanted to await final determinations on the federal lawsuits before evaluating it. (*See* D.03-12-044.)

(END OF APPENDIX A)

APPENDIX B

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? Yes, D0504049, D0703017
Contribution Decision(s):	D9910057, D0003058, D0103082, D0206070, and D0304034	
Proceeding(s):	A0011038, A0011056, A0010028, A9901016, A9901019, A9901034	
Author:	ALJ Kotz	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change / Disallowance
The Utility Reform Network	6/21/2004	Court remand	\$51,613	No	

Advocate Information

NOTE: The hourly fees shown below are approved pursuant to settlement. See Section 3.6 of today's decision.

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Amended or Adopted hourly fees
Michael	Strumwasser	Attorney	The Utility Reform Network	\$425	2000	\$425
Michael	Strumwasser	Attorney	The Utility Reform Network	\$459	2001	\$459
Michael	Strumwasser	Attorney	The Utility Reform Network	\$482	2002	\$482
Michael	Strumwasser	Attorney	The Utility Reform Network	\$513	2003	\$513
Michael	Strumwasser	Attorney	The Utility Reform Network	\$550	2004	\$550
Fredric	Woocher	Attorney	The Utility Reform Network	\$425	2000	\$425
Fredric	Woocher	Attorney	The Utility Reform Network	\$459	2001	\$459
Fredric	Woocher	Attorney	The Utility Reform Network	\$482	2002	\$482
Fredric	Woocher	Attorney	The Utility Reform Network	\$550	2004	\$550
Johanna	Shargel	Attorney	The Utility Reform Network	\$333	2001	\$333
Johanna	Shargel	Attorney	The Utility Reform Network	\$350	2002	\$350
Johanna	Shargel	Attorney	The Utility Reform Network	\$375	2003	\$375
Daniel	Sharfstein	Attorney	The Utility Reform Network	\$225	2001	\$225
Daniel	Sharfstein	Attorney	The Utility Reform Network	\$225	2002	\$225
Lea	Rappaport-Geller	Attorney	The Utility Reform Network	\$225	2001	\$225
Lea	Rappaport-Geller	Attorney	The Utility Reform Network	\$225	2002	\$225
Lea	Rappaport-Geller	Attorney	The Utility Reform Network	\$255	2003	\$255
Lea	Rappaport-Geller	Attorney	The Utility Reform Network	\$295	2004	\$295
Lamar	Baker	Attorney	The Utility Reform Network	\$225	2002	\$225
Lamar	Baker	Attorney	The Utility Reform Network	\$225	2003	\$225
Becky	Monroe	Attorney	The Utility Reform Network	\$255	2003	\$255
Becky	Monroe	Attorney	The Utility Reform Network	\$295	2004	\$295
Joshua	Lee	Analyst	The Utility Reform Network	\$140	2002	\$140
Joshua	Lee	Analyst	The Utility Reform Network	\$140	2003	\$140

(END OF APPENDIX B)