Decision 10-02-031 February 25, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.	Rulemaking 06-04-010 (Filed April 13, 2006)

DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 08-12-059

Claimant: The Utility Reform Network	**For contribution to Decision (D.) 08-12-059**
Claimed ($): $60,212.25[1]	**Awarded ($): 48,458.50**
Assigned Commissioner: Grueneich	**Assigned ALJ: Gamson**
Claim Filed: March 3, 2009	

PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)

A. Brief Description of Decision: In D.08-12-059, the Commission granted in part and denied in part the petition for modification filed by the major energy utilities in their effort to gain interim shareholder incentive payments for their energy efficiency programs. Where the utilities had sought approximately $152 million in incentive awards, as well as modification of earlier decisions to make the future review of such interim claims less stringent, the Commission authorized payments totaling $82.1 million (just over 50% of the requested amount) and rejected most of the requested changes.

[1] The Utility Reform Network's (TURN) request for compensation on the standardized form combined two claims: for TURN's contributions to D.08-12-059 and to the Energy Efficiency Advisory Group process. The total claimed amount was $163,903. However, substantive information related to the advisory group process was not included in the standardized form – it was provided in the traditional pleading format as an attachment to the form. It rendered impractical a use of the standardized format to address both claims, therefore, we separate TURN's claim into two. We address TURN's contributions to D.08-10-059 using the standardized form and information in TURN's timesheets. The decision on TURN's contributions to the advisory group process will follow at a later date. We removed from this form a few statements of the general character that TURN made with respect to its participation in the advisory group process.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	As stated by Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A (Comment 1)	05/09/2006; the most recent: 10/03/2008
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	June 8, 2006	Yes
4. Was the notice of intent timely filed?		
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	Rulemaking (R.) 06-04-010, the instant proceeding	Yes
6. Date of ALJ ruling:	June 28, 2006	Yes
7. Based on another CPUC determination (specify):		
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:	R.06-04-010, the instant proceeding.	Yes
10. Date of ALJ ruling:	June 28, 2006	Yes
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.08-12-059	Yes
14. Date of Issuance of Final Decision:	January 2, 2009	Yes
15. File date of compensation request:	March 3, 2009	Yes
16. Was the request for compensation timely?		Yes

Additional Comments on Part I **(use line reference # as appropriate):**

#	Claimant	CPUC	Comment
1	TURN		In a ruling issued June 28, 2006, ALJ Meg Gottstein found TURN eligible for compensation in an earlier phase of this proceeding. Pursuant to Rule 17.2, such an earlier finding of eligibility establishes eligibility for later phases of the same proceeding.

PART II: SUBSTANTIAL CONTRIBUTION (to be completed by Claimant except where indicated)

A. Claimant's description of its contributions to the final decision

(*see* § 1802(i), § 1803(a) & D.98-04-059)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. TURN opposed the Joint Utilities' petition for modification of D.07-09-043 and D.08-01-042. In a Joint Response filed with DRA and CEC, TURN challenged the requested relief based on the risk of overpayment it would place with ratepayers, contrary to the balance that the earlier decisions sought to achieve. The Commission agreed, and adopted a holdback of 65% and effectively reinstated the dead band for the *ex post* true up for the 2006-2008 cycle. The increased holdback rate reduced the awarded incentive amounts from $152 million to $82 million, a $70 million savings to customers of the four major energy utilities.	Joint Response, pp. 17-20, Appendix B; TURN Reply Comments on PD, pp. 3-5. Proposed Decision, pp. 14-15. D.08-12-059, p. 15, FOF 7.	Yes
2. TURN's contribution to the joint response included review and discussion of the Joint Utilities' disclosures in SEC filings after the adoption of D.08-01-042. In support of arguments countering the Joint Utilities' claims of the need for a "timely decision," TURN's arguments explained that the very matter-of-fact disclosures in SEC filings suggesting that the first interim claim might not be approved in 2008 dispelled any notion	Joint Response, pp. 12-17. Proposed Decision, pp. 8-10, Finding of Fact 3. D.08-12-059, p. 13.	Yes

that "the market" required an end-of-year decision. The initial Proposed Decision of ALJ Gamson cited this "uncontroverted evidence" presented by TURN, DRA and CEC as demonstrating that the utilities anticipated potential delay. The final decision also found that the utilities were aware of potential delays and understood that the earnings claims might not be finalized in 2008.		
3. The Joint Response TURN filed with DRA and CEC to the Joint Utilities' petition for modification included a demonstration that under the mechanism as adopted in D.07-09-043 and D.08-01-042, the utilities' first interim claim would be far less than the $152 million claimed by the utilities, and perhaps as low as zero. The initial Proposed Decision of ALJ Gamson referred to this analysis in its discussion of the risk of overpayment. While the final decision did not refer as specifically to this analysis, the Commission's statement that it shared, with TURN, DRA and CEC, "profound concerns" about exposing ratepayer s to "significant risk of overpayment" embraced the underlying logic of the Joint Response's position on this issue.	Joint Response, pp. 17-20, Appendix B; TURN Reply Comments on PD, pp. 3-5. Proposed Decision, pp. 14-15. D.08-12-059, p. 15, FOF 7.	Yes

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

	As Stated by Claimant	CPUC Verified
a. Was DRA a party to the proceeding? (Y/N)	**Yes**	**Yes**
b. Were there other parties to the proceeding? (Y/N)	**Yes**	**Yes**
c. If so, provide name of other parties:		**Yes**
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: On the shareholder incentive issues, TURN actively coordinated with DRA and Community Environmental Council throughout, including developing a joint response to the utility PFM, numerous discussions regarding strategy, and		**Yes**

coordination of comments on the Proposed Decision and Alternate Decision. Given the joint efforts of these groups were attempting to counter the joint efforts of the four major utilities and NRDC on this issue, TURN submits that duplication should be less of a concern here.	

PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Claimant except where indicated)

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

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)	CPUC Verified
TURN's work on the utilities' Petition for Modification helped reduce the awarded incentives from the $152 million they sought to approximately $82 million (nearly a 50% reduction). The direct benefits (a $70 million reduction from the requested interim incentive payments) should leave no doubt that the requested amount bears a very reasonable relationship to the benefits realized. In Comment 1, below, TURN describes how we allocated the requested hours by specific activity.	

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate $	Basis for Rate*	Total $	Year	Hours	Rate $	Total $
Robert Finkelstein	2008	79.25	$470	D.08-08-027, p. 5	$37,247.50	2008	61.60	$470	$28,952
Robert Finkelstein	2009	1.00	$470	Res. ALJ-235	$470.00				
Hayley Goodson	2008	10.25	$270	D.08-08-027, p. 5	$2,767.50	2008	6.25	$280	$1,750
Marcel Hawiger	2008	6.25	$325	D.08-08-027, p. 5	$ 2,031	2008	4.75	$325	$1,543.75
				Subtotal:	***$42,516.25***			***Subtotal:***	**$32,245.75**

EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Cynthia Mitchell	2008	90.25[2]	$170	See Comment 1 in Part III.C below for rationale.	$15,342.50	2008	81.53	$170	$13,859.25
				Subtotal:	***$15,257.50***			***Subtotal:***	***$13,859.25***

INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours[3]**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Robert Finkelstein	2009	7.5	$235	50% of 2008 rate set in D.08-08-027, p. 5	$ 1,763	2009	7.5	$235	$1,763
Cynthia Mitchell	2009	6.0	$85	50% of requested 2008 rate	$ 510	2009	6.0	$85	$510
				Subtotal:	***$2,273***			***Subtotal:***	***$2,273***

COSTS					
#	**Item**	**Detail**	**Amount**	**Amount**	
1	Photocopying	TURN pleadings, etc.	$81		$81
		Subtotal:	***$2,061***	***Subtotal:***	***$81***
		TOTAL REQUEST $:	***$60,212,25***	**TOTAL AWARD $:**	***$48,458.50***

- 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. Claimant's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

*** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.*

[2] We note that timesheet's entry of 11/29/2008 misallocates 0.50 hours spent on reviewing TURN's draft reply comments on PD. Since this time clearly related to TURN's work towards D.08-12-059, we include it in this column.

[3] Information in this column includes all hours TURN spent on preparing the request, including both request related to TURN's contributions to D.08-12-059 and request related to advisory groups.

C. Attachments or Comments Documenting Specific Claim (Claimant completes; attachments not attached to final Decision):

Attachment or Comment #	Description/Comment
Comment 1	**Allocation by Activity Code**[4] TURN has identified the following major issue and activity categories for purposes of allocating hours in this proceeding: "PFM2" - Hours TURN devoted to addressing the interim incentive payment issues that led to the Joint Utilities' petition for modification of D.07-09-041 and D.08-01-042.
Comment 2	**Rationale for Cynthia Mitchell's 2008 Rate:** TURN asked the Commission to set an hourly rate for the 2008 work of Cynthia Mitchell in R.08-07-011, the Energy Efficiency Strategic Plan proceeding. Since a decision has not yet issued on this recently-filed request for compensation, TURN renews this hourly rate request here. In D.06-02-016, the Commission approved an hourly rate of $140 for Ms. Mitchell's work in 2005, noting that the guidelines permitting larger-than-usual increases (as a percentage of the rate) applied since Ms. Mitchell had not raised her rate for many years and because her rate has historically been at or below the range of rates for her peers. Ms. Mitchell has continued billing at that rate for work in 2006 and 2007. In 2008, Ms. Mitchell increased her hourly rate to $170. In light of her having left her 2005 rate in place for 2006 and 2007, and her 30-year involvement in energy and utility matters, the Commission should find this rate reasonable for work performed in 2008. In D.08-04-010, the Commission adopted a 2008 range of $155-390 for experts with 13 or more years of experience; the requested rate for Ms. Mitchell would place her just above the lower end of that range. Furthermore, Ms. Mitchell's experience compares favorably with that of Jeff Nahigian at JBS Energy, who regularly performs economic analysis of utility programs on behalf of consumers. The Commission has approved a $175 hourly rate for Mr. Nahigian's work in 2007. In D.05-11-031 (p. 18, fn. 7), the Commission noted that Bill Marcus of JBS Energy had consistently requested small rate increases at rates below those of his peers. This is equally true for other members of the JBS Energy firm such as Mr. Nahigian. The fact that Ms. Mitchell's 2008 rate is below the 2007 rate for Mr. Nahigian should amply demonstrate to the Commission the reasonableness of her rate.

[4] Since this decision considers TURN's participation in the proceeding leading to D.08-01-042, we removed from the form information related to TURN's participation in the advisory groups.

D. CPUC Disallowances & Adjustments (CPUC completes):

#	Reason
Goodson and Hawiger hours related to TURN's response to the petition for modification (PFM)	TURN's timesheets show that Goodson read the PFM, and discussed and reviewed TURN's response to PFM. Hawiger reviewed the PFM and the decision that the PFM addressed. Since it appears that it was Finkelstein and Mitchell who drafted TURN's responses to PFM, we disallow 1 hour of Goodson's time and 1.50 hours of Hawiger's time spent on the activities related to TURN's response to PFM, to address our concerns regarding efficiency and productiveness of their work.
Finkelstein and Mitchell's time spent on Response to the PFM.	TURN describes its input in the Joint Response to PFM as reviewing and discussing of the Joint Utilities' disclosures in SEC findings. TURN explained that the disclosures in SEC filings dispelled any notion that "the market" required an end-of-year decision. The Joint Response demonstrated that under the mechanism as adopted in D.07-09-043 and D.08-01-042, the utilities' first interim claim would be far less than the $152 million claimed by the utilities, and perhaps as low as zero. We conclude that TURN provided an indispensable and substantial contribution to the decision through, among other things, Joint Response to PFM. At the same time, based on the complexity of the research involved and the fact that the joint response was a product of the efforts of three parties, we consider 65.50 hours of Finkelstein and Mitchell's combined time excessive. To come up the number reflective of the reasonable time necessary to provide TURN's input to the Joint Response, we reduce Finkelstein's time by 10% or 2.03 hours (10% of 20.25 hours spent on the Joint Response) and Mitchell's time by 10% or 4.73 hours (10% of 47.25 hours spent on the Joint Response).
Finkelstein's, Mitchell's, and Goodson's hours related to TURN's review of parties' responses to the PFM.	We observed that during the time after responses to PFM were filed and prior to the prehearing conference, timesheets of Finkelstein and Mitchell appear to reflect duplication of each other's efforts (for example, review of NRDC comments, review utilities' replies, e-mails). To mitigate this fact, we disallow 1.06 hours (25% of 4.25 hours) of Finkelstein's time and 1.50 hours (25% of 6.00 hours) of Mitchell's time. We also disallow 2.50 hours of Goodson's time because they were spent unproductively and were duplicative of other two representatives' efforts.
Mitchell's hours related to the prehearing conference	Both Mitchell and Finkelstein prepared for the PHC, and Finkelstein attended the PHC. To cure duplicative effort we reduce Mitchell's time spent on the preparation by 10% or 0.50 hours (10% of 5.00 hours).
Finkelstein's and Goodson's	We reduce by 15% or 3.56 hours (15% of 23.75 hours) Finkelstein's time spent on drafting of the comments, to address the excessiveness and duplication of the effort (Mitchell spent 4.75 hours on the same comments). We disallow 0.50 hours of

hours related to TURN's opening comments on the alternate proposed decision	Goodson's time spent on the related activities, for duplication of effort.
Finkelstein's hours related to TURN's reply comments on the proposed decision and on the alternate decision	We disallow 50% or 11.00 hours (50% of 22.00 hours) of Finkelstein's time related to preparing the reply comments, to reflect excessiveness of the hours. We disallow 2.00 hours of Mitchell's time related to these comments, to account for the duplicative, unproductive and excessive effort on her part.
Finkelstein's time after the adoption of D.08-12-059.	We remove one hour of Finkelstein's time spent after the issuance of D.08-12-059 as unrelated to TURN's contributions to the decision.
Hayley Goodson's hourly rate in 2008	TURN requests the rate of $270 for Goodson's work in 2008, relying on D.08-08-027. However, that decision adopted the rate of $280 for her work in 2008. We correct TURN's mistake and use the hourly rate of $280 for Goodson's work in 2008.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this claim, Commission Staff or any other party may file a response to the claim (*see* § 1804(c))

A. Opposition: Did any party oppose the claim (Y/N)?	No
B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6)) (Y/N)?	Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.08-12-059.

2. The claimed fees and costs as adjusted herein, 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 $48,458.50.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, [satisfies/fails to satisfy] all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded $48,458.50.
2. Within 30 days of the effective date of this decision, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company shall pay claimant 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 May 17, 2009, the 75th day after the filing of Claimant's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Rulemaking 06-04-010 remains open.

This order is effective today.

Dated Februay 25, 2010, at San Francisco, California.

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

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1002031	**Modifies Decision? No**
Contribution Decision(s):	D0812059	
Proceeding(s):	R0604010	
Author:	ALJ Gamson	
Payer(s):	Southern California Edison Company, 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 ?	Reason Change/Disallowance
The Utility Reform Network	March 3, 2009	$60,212.25	$48, 458.50	No	Inefficiency (duplication of each other's efforts by TURN's representatives); unproductiveness, excessiveness; adjustment of hourly rate.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	$470	2008	$470
Robert	Finkelstein	Attorney	The Utility Reform Network	$470	2009	$470
Hayley	Goodson	Attorney	The Utility Reform Network	$270	2008	$280
Marcel	Hawiger	Attorney	The Utility Reform Network	$325	2008	$325
Cynthia	Mitchell	Expert	The Utility Reform Network	$170	2008	$170
Cynthia	Mitchell	Expert	The Utility Reform Network	$170	2009	$170

(END OF APPENDIX)