

Decision 10-07-041 July 29, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for Authority to Update its Gas and Electric Revenue Requirement and Base Rates Effective on January 1, 2008.	Application 06-12-009 (Filed December 8, 2006)
And Related Matters.	Application 06-12-010 Investigation 07-02-013

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK, UTILITY CONSUMERS’ ACTION NETWORK, AND AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-04-003

Claimant: The Utility Reform Network (TURN), Utility Consumers’ Action Network (UCAN), and Aglet Consumer Alliance (Aglet)	For contribution to: Decision (D.) 10-04-003
Claimed (\$): \$24,490	Awarded (\$): \$24,490
Assigned Commissioner: John A. Bohn	Assigned ALJ: Douglas M. Long

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

The decision addressed the petition to modify of Division of Ratepayer Advocates (DRA) and Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E), collectively referred to as “Sempra Utilities” to defer the next general rate case (GRC) for those utilities until 2013 and to adopt an additional attrition year with various ratemaking mechanisms and adjustments for 2012. The decision rejected the requested relief, consistent with the arguments presented by The Utility Reform Network (TURN), Utility Consumers’ Action Network (UCAN), and Aglet Consumer Alliance (Aglet) in their joint response to that petition.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	None for the Petition to Modify	Yes
2. Other Specified Date for NOI:	None specified	Yes
3. Date NOI Filed:	March 12, 2007 (TURN); December 26, 2006 (UCAN); and March 9, 2007 (Aglet)	Yes
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.06-12-009, et al.	Yes
6. Date of ALJ ruling:	March 13, 2007 (UCAN); April 24, 2007 (TURN and Aglet)	Yes
7. Based on another CPUC determination (specify):		Yes
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.06-12-009, et al.	Yes
10. Date of ALJ ruling:	March 13, 2007 (UCAN); April 24, 2007 (TURN and Aglet)	Yes
11. Based on another CPUC determination (specify):		Yes
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-04-003	Yes
14. Date of Issuance of Final Decision:	April 13, 2010	Yes
15. File date of compensation request:	June 1, 2010	Yes
16. Was the request for compensation timely?		Yes

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

#	Claimant	CPUC	Comment
1	TURN/UCAN/Aglet		The Commission has previously found each of the three intervenors to be eligible for intervenor compensation in this proceeding, and has awarded intervenor compensation for each group's substantial contribution to D.08-07-046 earlier in the proceeding.
1a		X	In the past we have disallowed hours and expenses related to Aglet's travel to the Commission as being "routine" in nature and non-compensable.¹ TURN submits that Aglet (J. Weil) rarely comes to the CPUC for business (twice in 2010 to date), and would not have traveled to San Francisco on this occasion had it not been for a settlement meeting convened by the CPUC's General Counsel. Aglet has not sought compensation for its actual travel time. Here, given these facts, we find these costs compensable.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>The Petition for modification sought to add an additional attrition year to the current Sempra Utilities GRC cycle, at a ratepayer cost of \$97 million and with the adoption of a series of new ratemaking mechanisms. TURN, UCAN, and Aglet were the only parties to oppose the petition for modification, and that position prevailed.</p> <p>TURN, UCAN, and Aglet opposed the petition on several grounds: The requested relief was insufficiently justified, as the petition treated attrition as a right where the Commission has made clear it is discretionary; it</p>	<p>Sempra Utilities/DRA Petition for Modification (November 5, 2009).</p> <p>TURN/UCAN/Aglet Response (December 7, 2009) at 3-4.</p>	<p>Yes</p>

¹ See D.07-04-010 at 12.

<p>inappropriately used the Utility Price Index to set attrition increases where the Commission had never used that index for that purpose before; it failed to acknowledge the Commission's recent finding that the Commission and DRA have sufficient resources to process simultaneous GRCs; and it omitted any consideration of productivity gains.</p> <p>TURN/UCAN/Aglet also noted that the petition for modification largely sought to revive a Sempra Utilities/DRA proposal that had been specifically rejected in D.08-07-046.</p> <p>In D.10-04-003, the Commission discussed at some length the post test year ratemaking settlements adopted in D.08-07-046, including the earlier decision's stated reasons for adopting a four-year cycle rather than the five-year cycle sought by the Sempra Utilities and DRA at that time. It specifically noted that scheduling overlapping rate cases was a foreseen possibility in the earlier decision, with the only difference being that the overlap is with SCE rather than PG&E.</p> <p>The rejection of the petition for modification as presented was consistent with the arguments raised in TURN/UCAN/Aglet's response to the petition for modification – the Sempra Utilities and DRA had failed to demonstrate that the requested relief was reasonable given the underlying circumstances and the rate increase included as part of their request.</p>	<p>TURN/UCAN/Aglet Response (December 7, 2009) at 1-2.</p> <p>D.10-04-003 at 6-9.</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding?	Yes	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: The parties active with regard to the petition for modification were the Sempra Utilities, DRA, and TURN, UCAN, and Aglet.		Yes
d. Claimant’s description of how claimants coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party: TURN, UCAN and Aglet worked closely together to coordinate our showings and to avoid duplication, and were very successful in this regard as evidenced by our joint pleadings. Duplication with DRA was far less of an issue here as DRA was a sponsor of the petition for modification that TURN, UCAN, and Aglet opposed. Still, TURN, UCAN, and Aglet coordinated to the extent possible with DRA regarding those issues on which all four parties agreed.		Yes

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation:	CPUC Verified
<p>The petition for modification sought to increase the Sempra Utilities’ 2012 revenue requirement by \$97 million. The amount of intervenor compensation requested for the collective efforts of TURN, UCAN, and Aglet is approximately \$25,000. The Commission should find that the benefits realized through the intervenor’s participation are substantial enough such that the costs of that participation are extremely reasonable.</p> <p>The total number of hours for which intervenor compensation is requested is also reasonable. It is substantially lower than the cumulative total that would likely have been recorded had each of the three groups filed its own response to the petition for modification, and comments on the Proposed Decision.</p>	Yes

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
R. Finkelstein	2009-2010	33.75	470	D.09-10-051	\$15,862.00	2009-2010	33.75	470	\$15,862.00
J. Weil	2009-2010	10.50	300	D.08-05-033	3,150.00	2009-2010	10.50	300	3,150.00
M. Shames	2009-2010	12.60	330	D.09-11-026	4,158.00	2009-2010	12.60	330	4,158.00
Subtotal: \$23,170.00						Subtotal: \$23,170.00			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
R. Finkelstein	2010	4.50	235	½ 2009 rate	\$1,058.00	2010	4.50	235	\$1,058.00
J. Weil	2010	0.50	150	½ 2009 rate	75.00	2010	0.50	150	75.00
Subtotal: \$1,133.00						Subtotal: \$1,133.00			
COSTS									
#	Item	Detail			Amount \$	Amount \$			
1	Copies	Various Pleadings			\$5.00	\$5.00			
2	Lexis	Legal Research			132.00	132.00			
3	Travel	Mileage (70 miles @ .50 cents/mile); bridge toll (\$6); and parking (\$9)			50.00	50.00			
Subtotal: \$187.00						Subtotal: \$187.00			
TOTAL REQUEST: \$24,490.00						TOTAL AWARD: \$24,490.00			
<p>*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p> <p>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 seeks 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.</p>									

C. Comments Documenting Specific Claim:

Attachment or Comment #	Description/Comment
Comment 1	<p>Allocation of Hours: TURN, UCAN, and Aglet have not allocated their time entries by activity codes, because of the single-issue nature of the petition for modification. All of the hours (other than those devoted to compensation-related matters) focused on the question of postponing the test year to 2013 and the attrition increase and other ratemaking changes sought as part of that postponement.</p> <p>TURN, UCAN, and Aglet submit that this approach to allocation is consistent with the approach taken in prior compensation requests addressing single-issue proceedings. (See, for example, the TURN compensation request submitted in A.08-07-014 (PG&E Application for Affiliate Transaction Rule exemption).) Should the Commission believe that some further level of allocation is required for this request for compensation, TURN, UCAN, and Aglet request that we be provided an opportunity to provide such allocation prior to a decision issuing on this request for compensation.</p>
Comment 2	<p>Reasonableness of hours requested: The Commission should find the requested hours for TURN, UCAN, and Aglet reasonable and compensate them in full.</p> <p>TURN played the lead role among the three intervenors. TURN’s work in the proceeding covered initial discussions with the Sempra Utilities and DRA regarding the petition for modification a few days before the petition was filed and served, preparing the response of the three intervenors (including review of materials that led up to the outcome adopted in D.08-07-044 on these issues), drafting a letter responding to ex parte communications of the Sempra Utilities, drafting the intervenors’ comments on the Proposed Decision, and coordinating the effort to conduct settlement negotiations through the General Counsel’s office.</p> <p>UCAN and Aglet each seek compensation for a smaller number of hours. Throughout the period in which the petition for modification was under consideration at the CPUC, each group consulted with TURN via phone and e-mail to develop and pursue a common strategy and approach, and reviewed and edited draft pleadings to ensure consistency with that common strategy and approach. Each also participated in the attempt at settlement negotiations in early April, 2010.</p>
Comment 3	<p>Reasonableness of Expenses: The Commission should find TURN’s direct expenses reasonable. The expenses consist of a small amount of photocopying expenses associated with pleadings from this proceeding, and expenses for legal research conducted via the Lexis/Nexis database in support of TURN’s advocacy in this proceeding. There are also travel expenses for James Weil’s attendance at a settlement meeting convened by the CPUC’s General Counsel. This was not “general commuting,” as Mr. Weil only rarely comes to the CPUC for business (twice in 2010 to date), and would not have traveled to San Francisco on that day but for the settlement meeting. The Commission should note that Aglet is not seeking compensation for the actual travel time itself.</p> <p>See CPUC Comment 1a in Section C.</p>

Comment 4	TURN, UCAN and Aglet have agreed that any award should be paid to TURN, and TURN will forward to UCAN and Aglet the portions of the award that cover their costs of participation. Aglet and TURN have relied on in this arrangement in past proceedings. This is consistent with past practice where TURN and Aglet have submitted a joint request for compensation.
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D. CPUC Disallowances & Adjustments: None

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?

Yes

FINDINGS OF FACT

1. Claimants have made a substantial contribution to Decision (D.) 10-04-003.
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. TURN, Aglet, and UCAN submitted a joint request for compensation, consistent with their prior practice when TURN has forwarded the correct share of the award to Aglet and UCAN.
4. The total of reasonable contribution is \$24,490.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.
2. It is reasonable to allow TURN to forward to Aglet and UCAN their portion of the joint award.

ORDER

1. Claimants are awarded \$24,490.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company and Southern California Gas Company must each pay half of the award to The Utility Reform Network. The Utility Reform Network must forward to Utility Consumers' Action Network and Aglet Consumer Alliance the portions of the award that cover their costs of participation. 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 15, 2010, 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. These proceedings remain open to address other related matters.
5. This decision is effective today.

Dated July 29, 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:	D1007041	Modifies Decision? No
Contribution Decision(s):	D1004003	
Proceeding(s):	A0612009 et al.	
Author:	ALJ Douglas M. Long	
Payer(s):	San Diego Gas & Electric Company and Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	06-01-10	\$24,490	\$24,490	No	None

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	2009-2010	\$470
James	Weil	Expert	The Utility Reform Network	\$300	2009-2010	\$300
Michael	Shames	Expert	The Utility Reform Network	\$330	2009-2010	\$330

(END OF APPENDIX)