Decision 10-09-045 September 23, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for Modification of Decision 05-09-018 to Extend EDR-Retention Rates.	Application 09-10-012 (Filed October 13, 2009)
And Related Matter.	Application 09-11-010

DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-06-015

Claimant: The Utility Reform Network (TURN)	**For contribution to Decision 10-06-015**
Claimed: $34,208	**Awarded: $34,208**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: Seaneen M. Wilson**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

In Decision (D.) 05-09-018, the Commission had authorized Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) to file Economic Development Rate (EDR) tariffs to attract and retain businesses that would otherwise go out of business or leave the state, with a sunset date of December 31, 2009. The present applications sought to extend the authorization for three additional years, and were amended to seek an expansion of the cap for the load that could be served on those tariffs. In D.10-06-015, the Commission adopted a settlement agreement between the two utilities, TURN, the Division of Ratepayer Advocates, and Energy Users Forum. The settlement extended the sunset date for the EDR tariffs to December 31, 2012, set the program cap to 200 MW for each utility, revised the maximum discount available for new EDR customers, changed the method SCE uses to establish its floor price, and clarified the Commission's authority to review individual customer agreements in the course of overseeing the utilities' administration of these programs, among other things. The settlements resolved all disputed issues in the proceeding.

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:	January 29, 2010	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	March 1, 2010	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:	Application (A.) 09-10-012/A.09-11-010	Yes
6. Date of ALJ ruling:		
7. Based on another CPUC determination (specify):	March 12, 2010	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.09-10-012/A.09-11-010	Yes
10. Date of ALJ ruling:	March 12, 2010	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.10-06-015	Yes
14. Date of Issuance of Final Decision:	June 8, 2010	Yes
15. File date of compensation request:	August 4, 2010	Yes
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. **Need for review of program operation as part of determining expansion of cap or changing the amount or calculation of the discount, and ensuring opportunity for future Commission review of program operation:**		Yes
TURN's protest to the amended applications addressed the utilities' failure to present information regarding how the business retention tariffs have performed since their approval in D.05-09-018. TURN urged the Commission to include such review in the process of considering the utility requests for expansion of the program cap and for modification of the calculation of the price floor under the tariff.	TURN protest to amended applications (February 10, 2010), pp. 8-10.	
The amended Scoping Memo of March 11, 2010 expanded the scope of the proceeding to include consideration of "whether the existing EDR program … has been successful in maintaining the goals of the program, including but not limited to retention and/or attraction of businesses to California, while at the same time providing benefits to the non-participating customers."	Amended Scoping Memo, p. 3.	
The Settlement Agreement does not specifically address further review of how the economic development tariffs have performed to date. However, it includes provisions that will ensure that the Commission has necessary information to consider in such a review should it occur in the future. In particular, the Settlement Agreement	Settlement Agreement, §§ 4.l. and 4.m.	

added additional categories of information to the annual report each utility must file for its economic development rate activities, and requires the utilities to retain correspondence between the utility and potential EDR-R customers and the evaluation checklist each utility relies on during the process of determining eligibility.		
2. **Revision of Floor Price Calculation for SCE:** TURN's protest to the amended applications called for the Commission to reject SCE's proposed modified calculation of its floor price for retention customers, and to carefully review PG&E's floor price calculation. TURN engaged in detailed discovery on this issue and conducted research into each utility's Commission-approved marginal costs and the consistency (or lack thereof) between the approved marginal costs and the floor price calculations put forward by each utility. The amended Scoping Memo of March 11, 2010 included within the scope of the proceeding the determination of "whether the current and/or proposed methodology used by [the] utility for determining the floor price should continue/be adopted, or whether it should be revised." The settlement agreement substantially modified the approach SCE proposed to calculating the discount's floor price. Rather than use a marginal distribution cost component based on the specific facilities used to serve a potential EDR-R customer (which would potentially be zero under SCE's approach), the modified approach revised the calculation of marginal	TURN protest to amended applications (February 10, 2010), pp. 5-7. Amended Scoping Memo, p. 3. Settlement Agreement, § 4.f.	Yes

generation cost to reflect updated gas prices. This approach satisfactorily mitigated the concerns raised in TURNs protest.		
3. **Discouraging Free Riders:** TURN's protest to the amended applications raised concerns about the interest a particular customer had expressed in signing up for the SCE EDR-R rate, given evidence that appeared to indicate that the customer could not pass the "but for" showing required in order to establish eligibility for the rate. TURN continued to advocate for and support measures that would discourage "free riders" from seeking service under the EDR-R tariff. The amended Scoping Memo of March 11, 2010 identified the issue of "whether the current screening process used by [the] utility to determine eligibility should continue, or whether it should be revised. If revised, how should it be revised." The settlement agreement included provisions that sought to insure that the EDR-R discounts were available only to customers for whom a discounted electricity rate is more likely to make a difference in any business decision (billed electricity costs account for at least 5 percent of operating costs). The settlement agreement also includes provisions that will ensure that EDR customers are made aware that the Commission's existing authority includes review of the utilities' EDR program implementation, including specific contracts, and that contract specific information may be subject to discovery by other interested parties should such review occur. TURN is	TURN protest to amended applications (February 10, 2010), pp. 10-13. Amended Scoping Memo, p. 3. Settlement Agreement, §§ 4.k and 4.m.	Yes

hopeful that such language will discourage any customer that might have doubts about whether its eligibility would be upheld upon Commission review. The agreement also confirms that correspondence between the utility and the EDR customer that was associated with evaluation of that customer's eligibility for the EDR tariff will be retained in accordance with each utility's document retention policy.		

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

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct
c. If so, provide name of other parties: **Energy Users Forum, Tamco Steel Mini Mill, and Greenlining.**		Correct
d. Claimant's description of how it coordinated with DRA and other parties to avoid duplication or how claimant's participation supplemented, complemented, or contributed to that of another party: TURN worked closely with DRA in this proceeding, both in the development of our respective litigation positions and strategies, and in the effort to achieve a settlement that represented a reasonable outcome for ratepayer interests. At the outset, TURN joined the protest DRA primarily prepared to the SCE application. (Due to a service glitch, TURN was unaware of the similar PG&E application until shortly before the first prehearing conference.) After the utilities revised their requests to include not only extension of the timeline for the retention discounts but also expansion of the megawatt limit, TURN performed more of the analysis and review on its own, while still closely coordinating with DRA to ensure minimal overlap in our efforts. For example, TURN devoted more time and attention in discovery and the subsequent protest to amended applications to the SCE-proposed revision to the calculation of the price floor, and DRA focused more than TURN did on eligibility benchmarks such as the percent of operating costs that billed electricity costs represent for a potential New EDR customer. When settlement discussions began, TURN and DRA consulted frequently and took the lead on different issues. Where, as here, there were only a relatively few active parties in the proceeding and two represented the interests of small ratepayers, there will be some amount of overlap. TURN submits that we took all reasonable steps		Correct

to minimize such overlap and to ensure that when it did occur it served to permit TURN and DRA to supplement and complement each other's showing on these issues.	

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**
The PG&E and SCE applications for economic development rates are challenging to assess in terms of the costs and benefits to the general body of ratepayers. If the resulting rate discounts serve to avoid employers moving operations out of the utilities' service territories or shutting down operations altogether, the value to the economy in general likely makes the costs borne in rates worthwhile. On the other hand, if the discounts are given to utility customers who are not likely to cease or relocate their operations, the cost to ratepayers arguably produces no incremental benefit. Similarly, if the floor price is set below the figure representing the marginal cost of serving a particular customer, the utility's ratepayers are funding an uneconomic discount. TURN's involvement in this proceeding focused on minimizing the risk of "free riders" (customers obtaining the discount even though they are highly unlikely to cease or relocate operations) and ensuring that the price floor remains above the marginal cost of serving the customer receiving the discount. TURN devoted reasonable amounts of its resources to these and the other issues addressed in the proceeding. The course of the proceeding resulted in some inflation of the amount of hours. The original applications sought to extend the EDR programs through the end of 2012. A few months later, both utilities revised their request to include an increase in the megawatt limit under the tariff (from 100 MW to 200 MW (for PG&E) and 250 MW (for SCE)). TURN filed a protest to the amended applications on February 10, 2010. The assigned Administrative Law Judge (ALJ) issued a ruling directing the active parties to develop and file a joint statement of facts (including identification of disputed facts). After a second prehearing conference statement (conducted over two days and in part by telephone), an Amended Scoping Memo issued indicating that the Commission would pursue a two-track approach, and would first issue an interim decision on the question of expanding the program cap for SCE. The procedural schedule was then suspended in order to enable parties to continue the recently-initiated settlement discussions. These discussions were ultimately fruitful, with a settlement agreement either supported or not opposed by all active parties presented to the Commission on May 3, 2010.	Yes

TURN's efforts in this proceeding are evident in the settlement agreement's language on the floor price calculation for SCE, the disclosures that will hopefully further discourage any potential free riders, and the provisions ensuring more meaningful opportunities for future Commission review of the operation and administration of the programs. The total hours included in this request represent slightly more than 1.5 weeks of attorney time (and a single hour of assistance from TURN's outside consultant on technical questions about floor price issues). In light of the amounts of ratepayer-funded discounts at stake in this proceeding, TURN's requested intervenor compensation of approximately $35,000 is very reasonable.	

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Robert Finkelstein	2009	1.25	470	D.09-08-025	588	2009	1.25	470	588
Robert Finkelstein	2010	68.75	470	D.10-06-046	32,312	2010	68.75	470	32,312
					***Subtotal:* $32,900**				***Subtotal:* $32,900**
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
William Marcus	2010	1.00	250	D.10-03-019 and Res. ALJ-247	250	2010	1.00	250	250
					***Subtotal:* $250**				***Subtotal:* $250**
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Robert Finkelstein	2010	4.50	235	½ rate approved in D.10-06-046	1,058	2010	4.50	235	1,058
					***Subtotal:* $1,058**				***Subtotal:* $1,058**
					TOTAL REQUEST: $34,208				**TOTAL AWARD: $34,208**

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

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.

C. TURN's Comments Documenting Specific Claim:

Comment #	Description/Comment
1	**Allocation of Hours:** TURN has allocated its time entries by the following activity codes: GP - General Participation: time for activities necessary to participate in the docket that typically do not vary by the number of issues addressed, such as initial review of applications and amended applications, participation in prehearing conferences, and similar activities. ProgOper – Ensuring the Commission's ongoing ability to review the operation and administration of the economic development programs to date, as well as going forward. Floor Price – Review of PG&E's existing floor price calculation as well as SCE's proposed revisions to its floor price calculation to ensure that the resulting floor price exceeds the marginal cost of serving the EDR-eligible customer. FreeRider – Preventing free riders from seeking or establishing eligibility for service under the economic development rate tariffs. Settle – Settlement-related matters, including discussions with other parties and development of TURN's settlement position and strategy. Comp – Time devoted to compensation-related pleadings # - Time entries that cover substantive issue work that cannot easily be identified with a specific activity code. The time entries coded # represent approximately __% of the total hours TURN recorded for work on this proceeding. TURN requests compensation for all of the time included in this request for compensation, and therefore does not believe allocation of the time associated with these entries is necessary. However, if such allocation needs to occur, TURN proposes that the Commission allocate these entries in equal 25% shares to the three issue-specific categories described above (ProgOper, Floor Price, FreeRider) and general participation (GP). TURN submits that under the circumstances this information should suffice to address the allocation requirement under the Commission's rules. Should the Commission wish to see additional or different information on this point, TURN requests that the Commission so inform TURN and provide a reasonable opportunity for TURN to supplement this showing accordingly.
2	**Hourly Rate for TURN attorneys and consultants in 2010**: The Commission has not previously authorized an hourly rate for TURN's attorneys or consultants where a substantial portion of the substantive work in the proceeding occurred in 2010. In this proceeding TURN requests compensation using the previously-approved 2009 hourly rates for each attorney's and consultant's 2010 work. TURN reserves the right to seek a higher hourly rate for work performed in 2010 in a future request for compensation.

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(2)(6))?	Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.10-06-015.
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 $34,208.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded $34,208.
2. Within 30 days of the effective date of this decision, Southern California Edison Company and Pacific Gas and Electric Company shall each pay Claimant one half of 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 October 18, 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.

This order is effective today.

Dated September 23, 2010, at San Francisco, California.

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

Commissioner John A. Bohn, being necessarily absent, did not participate.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1009045	**Modifies Decision?** No
Contribution Decision(s):	D1006015	
Proceeding(s):	A0910012 and A0911010	
Author:	ALJ Seaneen M. Wilson	
Payer(s):	Southern California Edison Company and Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	08-04-2010	$34,208	$34,208	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	2009	470	2009
Robert	Finkelstein	Attorney	The Utility Reform Network	2010	470	2010
Bill	Marcus	Expert	The Utility Reform Network	2010	250	2010

(END OF APPENDIX)