Decision 10-09-040 September 23, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own Motion into the Exemption from Pub. Util. Code §851 for Uniform Regulatory Framework and other Competitive Carriers.	Rulemaking 09-05-006 (Filed May 7, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-05-019

Claimant: The Utility Reform Network (TURN)	**For contribution to D.10-05-019**
Claimed: $ 27,298.07	**Awarded: $27,298.07**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: A. Kirk McKenzie**

PART I: PROCEDURAL ISSUES

4. **Brief Description of Decision:** The Final Decision creates an exemption from Public Utilities Code §851 for carriers classified as Uniform Regulatory Framework (URF) carriers. It exempts these carriers from the requirement to file a request with the Commission to sell or encumber "non-controversial" assets. The Decision specifies criteria to identify non-controversial assets and imposes a requirement that carriers file an annual report specifying any transactions that include these assets. The Decision closes the docket, but specifies that after four years, interested parties can petition to reopen the docket to consider exemptions for additional assets or a re-look at the exemption process.

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

	Claimant	NOI Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Yes
2. Other Specified Date for NOI:	June 26, 2009	Yes
3. Date NOI Filed:	July 22, 2009	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.08-05-023	Yes
6. Date of ALJ ruling:	April 22, 2009	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:	A.08-05-023	Yes
10. Date of ALJ ruling:	April 22, 2009	Yes
11. Based on another CPUC determination (specify):		TURN received a finding of significant financial hardship in an ALJ's Ruling issued on April 22, 2009, in A.08-05-023. This proceeding commenced within one year of the date of this finding, so the rebuttable presumption applies in this case.
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-05-019	Yes
14. Date of Issuance of Final Decision:	May 11, 2010	Yes
15. File date of compensation request:	July 12, 2010	Yes
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
2	X		Pursuant to Rules of Practice and Procedure 17.1, an NOI may be filed within 30 days of the date to file responsive pleadings. Initial comments in this docket were filed June 26, 2009. The NOI was timely filed on July 22, 2009.
7, 11	X		The ALJ has not yet issued a Ruling on TURN's Notice of Intent to Claim Compensation, filed July 22, 2009 in this docket. Therefore, TURN relies upon previous Commission decisions to demonstrate its customer status and its significant financial hardship.

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
The November 9, 2009 Scoping Memo included a proposal for an annual Tier 1 Advice Letter filing, listing exempted asset transactions. This filing would be subject to protest. TURN objected to this proposal on several grounds including the fact that such a process would give the appearance of a meaningful protest while in reality the chance of any transaction being voided as a result of a protest, one year after the closure of the transaction, was slim. *TURN's Supplemental Comments at p.2*	The Final Decision cites to TURN's comments on the November 9th Scoping Memo at length on this issue and changes the notice requirement from an Advice Letter process to an Annual Report. *Final Decision at p. 12-13, 20, FOF 16.*	Yes
In at least two of its filings, TURN raised the issue of the potential for conflict between existing asset transfer rules in ALJ-202 and rules that may be created in this docket. TURN urged the Commission to explicitly address this conflict and clarify which set of rules would apply to URF carriers. *TURN/DRA Opening Comments at pp. 3-4; TURN Supplemental at p. 4*	In the August 6, 2009 ACR, the Assigned Commissioner requested comment on whether the sets of rules are in conflict citing the TURN/Division of Ratepayer Advocates (DRA) request for clarification. *August 6th ACR at footnote 7, pp.13-14.* The Final Decision references the TURN/DRA request for clarification on the applicability of ALJ-202 at Page 4. However, the	Yes

	Final Decision creates an exemption from Section 851 requirements, thereby eliminating the need to explicitly reference or clarify the rules in ALJ-202 because they would not apply.	
One of the possible outcomes of this docket was a complete, blanket exemption from any filing pursuant to Section 851 for asset transfers as advocated by several URF carriers. TURN opposed the carriers' proposal for a full exemption from Section 851 for asset transfers. TURN supported proposals, including its own, which would have allowed for lesser scrutiny of these transactions under Section 851, while still maintaining certain filing and notice requirements. *TURN/DRA Joint Opening Comments at p. 4; TURN Supplemental at p. 3-4, 8.*	The Final Decision rejects the carriers' calls for a full exemption from Section 851. *Final Decision, COL 1, 2, 4* Although the Final Decision does not adopt TURN's specific proposal, it does adopt a regulatory structure that allows for lesser scrutiny of these transactions while still maintaining regulatory oversight and continuing to subject major transactions to Section 851. *Final Decision at FOF 8, 10, 11, O.P. 5, 6.* Additionally, the November Scoping Memo and the Final Decision specifically respond to TURN's proposals thereby strengthening the analysis in the Final Decision and supplementing the record. *November 6th Scoping Memo at p. 6-7; Final Decision at p. 4, 9, 1.4*	Yes
TURN supported the proposal to consider reduced review requirements for "non-controversial" assets in Phase I of a bifurcated proceeding. Then, Phase II would address those transactions with more significance. *TURN/DRA Reply Comments at pp. 2-3; TURN Supplemental Comments at p. 1.*	The Scoping Memo adopted a schedule that created a two phases for the docket, including the consideration of major transactions in the later Phase. The Final Decision then further acknowledged that additional evidence and review of these asset transfers would be necessary before granting an exemption for those transactions and it further delayed any consideration of an exemption for four years. *Final Decision at p. 27, FOF 20, COL 2, 3, 10.*	Yes

The carriers made claims in their initial	The August Assigned	Yes

filings that the current Section 851 review process caused delay and harmed the competitiveness of the carriers. TURN, along with DRA, in its reply comments requested that the Assigned Commissioner require the carriers to file an accounting of their recent Section 851 Applications to provide evidence in the record of the alleged harm. Upon review of the information, TURN pointed out that the carriers' list of filings did not support their claim of harm and did not support a rush to exemption. *TURN/DRA Reply Comments at pp. 5-6; TURN Supplemental at p. 9-10.*	Commissioner's Ruling requested that carriers file such an accounting, agreeing with TURN/DRA that such an effort should not be unduly burdensome. *August 6th Ruling at p. 13-14.* Although the Scoping Memo and the Final Decision do not mention this additional information entered into the record, this information did supplement the record to show that current Section 851 processes were not burdensome and allowed the Commission to delay Phase II.	
In TURN's joint filing with DRA, we raised concerns that exempting significant transactions from review would also fail to capture necessary reviews of the transaction under the California Environmental Quality Act and certain Public Utilities Code statutes and PUC rules. *TURN/DRA Opening Comments at p. 6-7, 14*	The August Assigned Commissioner's Ruling requested further comment on this issue. In the Final Decision, this issue was addressed and determined that there are other avenues and methods to ensure proper CEQA review. *Final Decision at pp. 13-14, FOF 19, 21, OP 8.*	Yes

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 Consumer Federation of California (CFC), CalTEL, and several individual carriers.		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: TURN and DRA worked very closely together on these issues. When appropriate, we filed joint pleadings and coordinated our overall strategy. This collaboration created an efficiency that allowed TURN to keep its hours low even though it substantively and significant contributed to the		Yes

filings. In later parts of the docket, TURN took slightly different but complementary positions to DRA. While both parties continued to oppose broad exemptions to the Section 851 process, TURN and DRA made different proposals as to how the process should work. For example, TURN proposed a process that would have provided for an initial review of an asset transfer transaction before granting an exemption from a full review, but still using the FCC Accounting Codes to determine if the transaction was "non-controversial." DRA proposed a more elaborate set of criteria for review of these transactions and enumerated a list of assets that they argued should not be granted exemption. Both TURN and DRA added to the record in this docket with different ideas and concerns, while still presenting an overall strategy that promoted only limited exemptions from the Section 851 review process. TURN's work did not duplicate CFC's work. CFC consistently took different positions than TURN, generally opposing any potential weakening of the current review process for Section 851 transactions. TURN also did not duplicate the work of CalTEL. Although our positions were similar on certain issues, CalTEL focused its advocacy on the needs of competitive carriers and the impact these asset transfers may have on the facilities used to provide wholesale service. While TURN supported CalTEL's goal of protecting competitive access because such access would ensure customer choice, the focus of TURN's advocacy was the small business and residential customer thereby leading us to raise concerns about how these transactions would affect service quality and the treatment of assets that had been paid for by ratepayers over the years.	

PART III: REASONABLENESS OF REQUESTED COMPENSATION)

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

Claimant's explanation of how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	CPUC Verified
TURN's work in this docket helped the Commission determine whether an exemption from Section 851 would be in the "public interest" as required by Public Utilities Code Section 853. TURN looked for any potential benefit for the end user customer if the Commission granted the carriers a complete exemption from Section 851 requirements. TURN found that such an exemption would not be in the public interest and instead proposed alternatives that balanced the need for review and scrutiny of these transactions with the goal of reducing regulatory burden. As with most quasi legislative rulemaking proceedings, the precise benefits	Yes

to end users are difficult to quantify. However, end user consumers will benefit from the Commission's refusal to grant a blanket exemption and its decision to delay Phase 2 until more data is gathered on the impact of the narrow exemption for non-controversial assets. This solution will allow transactions to be reviewed through either the annual filing requirement or through an 851 Application to ensure no harm or service degradation will be experienced by the consumer. Although the Commission granted a broader exemption than originally advocated for by TURN, the end user ratepayers still benefit because the exemption is limited to assets that theoretically will not be service-affecting thereby preserving service quality. Consumers will also benefit from the opportunity to revisit this issue if the granted exemptions are not in the public interest and the delay of additional requests for exemption for more crucial assets. Further, there was a clear indication from the Commission that the granted exemption will not affect other statutory obligations, such as CEQA review or competitive access to incumbent networks. TURN participated in all aspects of this proceeding addressing the majority of critical issues and providing unique contributions that may have not been presented without our participation. TURN's efforts constituted a substantial contribution warranting compensation for all of TURN's reasonable efforts addressing those issues. TURN's costs of participation bear a reasonable relationship to the benefits realized through participation.	

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Bob Finkelstein	2010	0.70	470	D-10-06-046	329.00	2010	0.70	470	329.00
William Nusbaum	2009	6.25	435	D.09-08-020	2,718.75	2009	6.25	435	2,718.75
Christine Mailloux	2009	47.00	390	D.10-06-016	18,330.00	2009	47.00	390	18,330.00
Christine Mailloux	2010	5.50	390	Rate adopted here	2,145.00	2010	5.50	390	2,145.00
Regina Costa	2009	7.00	275	D.10-06-016	1,925.00	2009	7.00	275	1,925.00
					***Subtotal:* $25,447.75**				***Subtotal:* $25,447.75**

INTERVENOR COMPENSATION CLAIM PREPARATION **

Item	Year	Hours	Rate $	Basis for Rate	Total $	Year	Hours	Rate $	Total $
Christine Mailloux	2009	3.00	195	½ rate adopted in D.10-06-016	585	2009	3.00	195	585
Christine Mailloux	2010	6.00	195	½ rate adopted here	1,170	2010	6.00	195	1,170
					***Subtotal:* $1,755.00**				***Subtotal:* $1,755.00**

COSTS			
Item	**Detail**	**Amount $**	**Amount $**
Copies	Various Pleadings	8.80	8.80
Lexis	Legal Research	86.52	86.52
		***Subtotal:* $95.32**	***Subtotal:* $95.32**
		TOTAL REQUEST: $27,298.07	**TOTAL AWARD: $27,298.07**

**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. Comments Documenting Specific Claim:

Comments	Description/Comment
#1	TURN has allocated its hours by issue area for ease of reference. **Process and Procedure (PP)**: Possible bifurcation of the docket, proposals for Phase II, possible workshops, possible hearings, and other issues related to the schedule of the docket. (15%) **Criteria for Exemption (EX)**: Whether to grant an exemption from 851 requirements, whether to limit the exemption to non-controversial assets and how to define "non-controversial." (30%) **Reporting Requirement (RR)**: Should transactions exempted from Section 851 review be subject to an annual reporting requirement and, if so, how to structure the report. (20%) **Impact on other obligations (IMP)**: Whether an exemption from Section 851 reporting would impact or interfere with the compliance of other regulatory or statutory obligations of either the carriers or the Commission. (25%)

	General Preparation (GP) (10%) The percentages represent an allocation of time spent by issue for entries where it is not easy to identify work on individual issues. Those entries are marked with a "#" on the time sheets.
#2	For the limited purpose of this compensation request, TURN applied the rates approved for 2009 to work performed in 2010. While this compensation request has a very limited number of hours for 2010, TURN reserves the right to request a higher rate for work performed in 2010 in future compensation requests where the 2010 hours may be more substantial.

D. CPUC Adoptions:

Item	Reason
2010- Mailloux hourly rate	ALJ-235 disallows COLA increases for intervenor work in 2010. As such, we apply Mailloux's previously adopted 2009 rate in D.10-06-016 of $435 to Mailloux's 2010 work here.

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. Claimant has made a substantial contribution to Decision (D.)10-05-019.

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 $27,298.07.

CONCLUSION OF LAW

1. The claim satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded $27,298.07.

2. Within 30 days of the effective date of this decision, The CPUC Intervenor Compensation Fund 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, September 25, 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 decision 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:	D1009040	**Modifies Decision?** No
Contribution Decision(s):	D1005019	
Proceeding(s):	R0905006	
Author:	ALJ A. Kirk McKenzie	
Payer(s):	The CPUC Intervenor Compensation Fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	07-12-10	$27,298.07	$27,298.07	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Bob	Finkelstein	Attorney	The Utility Reform Network	470	2010	470
William	Nusbaum	Attorney	The Utility Reform Network	435	2009	435
Christine	Mailloux	Attorney	The Utility Reform Network	390	2009	390
Christine	Mailloux	Attorney	The Utility Reform Network	390	2010	390
Regina	Costa	Expert	The Utility Reform Network	275	2009	275

(END OF APPENDIX)