

Decision 11-04-027 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for a Two-Year Extension of the ClimateSmart™ Program and Tariff Option. (U39M)

Application 09-05-016
(Filed May 18, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISIONS 09-11-018 AND 10-10-025

Claimant: The Utility Reform Network (TURN)	For contributions to D.09-11-018 and D.10-10-025
Claimed: \$27,327	Awarded: \$27,327
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Katherine Kwan MacDonald

PART I: PROCEDURAL ISSUES

A. Brief Description of Decisions: Decision 09-11-018 granted a request by Pacific Gas and Electric Company (PG&E) to continue operating the ClimateSmart Program and Tariff Option after December 31, 2009 until a decision is reached on PG&E's application to extend the program until December 31, 2011. In granting a day-to-day extension, the Commission authorized PG&E to expend the minimum amount necessary to maintain the program from unspent administrative and marketing funds collected from ratepayers.

Decision 10-10-025 granted the request of Pacific Gas and Electric Company to extend the ClimateSmart Demonstration Program and Tariff Option until December 31, 2011 subject to certain conditions and restrictions.

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:	July 29, 2009	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	August 28, 2009	Correct
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.09-05-016	Correct
6. Date of ALJ ruling:	September 4, 2009	Correct
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.09-05-016	Correct
10. Date of ALJ ruling:	September 4, 2009	Correct
11. Based on another CPUC determination (specify):	A.08-05-023	
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-10-025	Correct
14. Date of Issuance of Final Decision:	November 2, 2010	Correct
15. File date of compensation request:	January 3, 2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s claimed contribution to the final decisions:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. DAY-TO-DAY EXTENSION / RESTRICTIONS: DRA and TURN did not oppose PG&E’s request for an extension pending the Commission’s decision on the underlying application but urged the Commission not to authorize the expenditure of additional ratepayer funds during the day-to-day extension period. TURN and DRA expressed concern that PG&E could expend a significant share of remaining program funds prior to a final Commission decision on the overall program extension. TURN and DRA proposed that any program spending during the extension period should be financed by PG&E shareholders.</p> <p>In D.09-11-018, the Commission granted the day-to-day extension but, recognizing the concerns identified by TURN and DRA, limited expenditures to “the minimum amount necessary to maintain the Program during the day-to-day extension period.”</p> <p>The Commission adopted the specific restriction “that PG&E should not be allowed to use ratepayer funds during this period for marketing expenses. As part of this proceeding, we will be considering how PG&E should modify the Program to meet its enrollment goals. Since we will be considering the extent to which PG&E’s current marketing program should be modified if the application is granted, we do not believe any additional funds should be expended for this purpose until after such a determination is made. To the extent PG&E believes marketing expenditures are necessary during the extension period, funding for these expenditures shall come from its shareholders.”</p>	<p><u>Comments of TURN and DRA on PG&E request for a day-to-day extension, October 6, 2009, pages 1, 4, 5.</u></p> <p><u>D.09-11-018, Conclusion of Law #5</u></p> <p><u>D.09-11-018, page 4</u></p>	<p>Yes</p>

<p>3. Shareholders / Contribution to Marketing Efforts</p> <p>TURN argued that PG&E shareholders should fund ongoing marketing efforts and that ratepayer funds should not be used for this purpose.</p> <p>Although the Commission approved PG&E's ability to use of ratepayer funds for continued operation of the program, it determined that "a lack of ratepayer funds should not be a reason to fail to deploy new marketing strategies. PG&E may need to spend shareholder funds to achieve its marketing objectives. Given the limited funds remaining, the Commission anticipates that PG&E will spend all remaining A&M funds during the extension period, as well as any shareholder funds that may be necessary, to maximize success of the demonstration program."</p>	<p><u>TURN/DRA post-workshop brief, pages 10-12.</u></p> <p><u>D.10-10-025, page 20.</u></p>	<p>Yes</p>
<p>4. Shareholders / Clarifying Timing and Enforcement of Shareholder Obligation</p> <p>TURN requested clarification that PG&E must honor its shareholder obligation to satisfy the minimum Greenhouse Gas (GHG) reduction targets by December 31, 2011. Specifically, TURN argued that "if PG&E receives approval to extend the program by 2 additional years, the shareholder obligation should be calculated based on the deficit between the minimum guarantee and total GHG reductions supported through customer contributions collected through December 31, 2011. PG&E should be required to agree to this condition as part of the current application and not permitted to extend the deadline regardless of whether ClimateSmart continues past 2011."</p> <p>The Commission agreed with TURN. The Decision states "we hold that consistent with D.06-12-032, the PG&E shareholder obligation is the difference between the minimum performance guarantee of</p>	<p><u>TURN/DRA post-workshop brief, page 13.</u></p> <p><u>D.10-10-025, page 23</u></p>	<p>Yes</p>

<p>1.5 million short tons minus the total GHG reductions supported through customer collections through December 31, 2011.”</p>		
<p>5. Marketing / Inappropriate Uses of Funds</p> <p>TURN/DRA expressed concerns about the use of ClimateSmart funds for outreach efforts that inappropriately promote PG&E’s public relations objectives that are unrelated to the ClimateSmart program.</p> <p>The Commission noted the concerns raised by TURN/DRA and ordered that “PG&E must limit use of ClimateSmart Demonstration program A&M funds to the marketing and administration of the ClimateSmart Demonstration program.” Under this directive, PG&E must refrain from using ClimateSmart outreach for unrelated public relations efforts.</p>	<p><u>TURN/DRA opening comments on MacDonald PD, pages 4-5.</u> <u>TURN/DRA reply comments on MacDonald PD, page 3.</u> <u>TURN/DRA post-workshop comments, pages 8-10</u></p> <p><u>D.10-10-025, page 24</u></p>	<p>Yes</p>
<p>6. Program Effectiveness</p> <p>TURN argued that the ClimateSmart program has failed to produce more than a small fraction of the enrollments predicted by PG&E in its original application and is expected to yield customer subscription revenues equivalent to only 16.5% of the low-end forecast and 11.3% of the high-end forecast. TURN/DRA provided extensive analysis of PG&E’s failure to satisfy its own program goals based on data received through the discovery process in this proceeding.</p> <p>The Commission agreed that “customer response and enrollment in the ClimateSmart Demonstration Program has been far less than anticipated and PG&E has fallen far short of achieving its GHG offset procurement goals.”</p>	<p><u>TURN/DRA post-workshop comments, pages 2-5</u> <u>TURN/DRA opening comments on MacDonald PD, pages 1-2.</u></p> <p><u>D.10-10-025, page 13</u> <u>D.10-10-025, Finding of Fact #9</u></p>	<p>Yes</p>

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

Claimant		CPUC Verified
a. Was Division of Ratepayers Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	No	Correct
c. If so, provide name of other parties:		N/A
<p>d. Claimant’s description of how claimant coordinated with DRA to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of DRA:</p> <p>TURN coordinated extensively and continuously with DRA in this proceeding. The coordination included working on discovery requests, settlement strategy, participation in the October 22, 2009 workshop, joint post-workshop comments, joint comments on the day-to-day extension request, and joint comments on the Proposed Decisions issued in advance of D.09-11-018 and D.10-10-025. TURN took the lead on drafting most of the joint pleadings on behalf of TURN and DRA. Since TURN and DRA worked so closely together on this application and shared the workload associated with discovery and comments, the total use of staff resources was minimized and there was no material duplication of effort.</p>		<p>We make no reductions to TURN’s claim for duplication of effort. As evidenced by multiple TURN and DRA joint filings, TURN’s worked to supplement and/or complement the work of DRA.</p>

C. TURN’s Additional Comments on Part II:

#	Claimant	CPUC	Comment
1	TURN		<p>Additional Factors to Consider in Determining TURN’s substantial contribution</p> <p>In this proceeding TURN identified a set of concerns regarding the ClimateSmart program and sought to place the burden of paying for the program extension entirely on PG&E’s shareholders. The Commission did not embrace this recommendation but did recognize the legitimacy of the underlying concerns, acknowledged key failings in the program to date, and adopted specific conditions related to these concerns.</p> <p>The standard for an award of intervenor compensation is whether TURN made a substantial contribution to the Commission’s decision, not whether TURN prevailed on a particular issue. For example, the Commission recognized that it “may benefit from an intervenor’s participation even where the Commission did not adopt any of the intervenor’s positions or recommendations.” (D.08-04-004, in A.06-11-007, pages 5-6). In that case TURN’s opposition focused on the need for Southern California Edison’s contract with Long Beach Generation and the overall cost effectiveness of the resource. The Commission stated that “The opposition presented by TURN and other intervenors gave us important information regarding all issues that needed to be considered in deciding whether to approve SCE’s application. As a result, we were able to fully consider the consequences of adopting or rejecting the LBG PPA. Our ability to thoroughly analyze and consider all aspects of the proposed PPA would not have been possible without TURN’s participation.” <i>Id.</i>, at 6. On this basis the Commission found that TURN had made a substantial contribution even though its positions had not been adopted, and awarded TURN intervenor compensation for all of the reasonable hours devoted to the proceeding.</p> <p>The Commission reached a similar conclusion in D.09-04-027, awarding intervenor compensation for TURN’s efforts in the SCE AMI proceeding (A.07-07-026). There the Commission found TURN to have made a substantial contribution even on issues where TURN did not prevail, as TURN’s efforts “contributed to the inclusion of these issues in the Commission’s deliberation” and caused the Commission to “add more discussion on the issue, in part to address TURN’s comments.” (D.09-04-027, page 4).</p> <p>In this proceeding, TURN was successful in developing the record and providing invaluable analysis related to ClimateSmart program performance, enrollment trends, customer acquisition costs, carbon reduction costs, annual spending patterns and potential abuse of the marketing efforts (see TURN/DRA post-workshop comments, pages 2-5, 10-11, Appendix A, B; TURN/DRA comments on MacDonald PD, pages 2-3, 4-5; TURN/DRA reply comments on MacDonald PD, page 3). This information was primarily obtained through discovery and research conducted by TURN and was not possible based on the data provided by</p>

		<p>PG&E in its application. This type of contribution should be recognized by the Commission because it assists in considering the reasonableness of PG&E's application and provides greater clarity into the actual state of the program.</p> <p>Although TURN did influence the outcome of the Decision in this proceeding, the Commission did not agree to return unspent Administration and Marketing funds to ratepayers (See TURN/DRA post-workshop comments, pages 11-12) or to require that the 1.5 million ton obligation be satisfied using metric (rather than short) tons (see TURN/DRA post-workshop brief, pages 13-15). Even though the Decision did not embrace these two recommendations, the Commission should find that TURN's participation provided significant value to the decision-making process such that a full award of intervenor compensation is warranted.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>Claimant's explanation of how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation</p>	<p>CPUC Verified</p>
<p>As demonstrated in the substantial contribution section, the Commission adopted a number of conditions and restrictions based on the pleadings submitted by TURN/DRA. The impact of TURN's participation has several ratepayer benefits.</p> <p>First, ratepayers will not be at risk for any financial obligations associated with PG&E failing to achieve minimum greenhouse gas reduction targets. All shortfalls as of December 31, 2011 will be the responsibility of PG&E shareholders and ratepayers will not contribute additional funds for this purpose.</p> <p>Second, PG&E is obligated to restrict its marketing activities to efforts that are directly related to the ClimateSmart program. This means that PG&E cannot spend program funds for general public relations purposes or to promote its corporate brand.</p> <p>Third, TURN's contributions will assist the Commission in considering whether to approve similar programs in the future whether for PG&E or other utilities. The record evidence developed by TURN provides important analysis regarding customer acquisition costs, overall costs of greenhouse gas reductions associated with a retail subscription model, and the important role of a shareholder guarantee.</p> <p>Although the remaining amounts of ratepayer funds associated with this program are modest compared to many cases litigated by TURN, the</p>	<p>We agree that TURN's hours and costs unadjusted are reasonable and bear a reasonable relationship with benefits to ratepayers that TURN has described here.</p>

consequences of the program extension are significant. If the Commission wants to encourage utilities to experiment with new approaches to combating climate change, the record of this proceeding (and the direction provided to PG&E) should be critical to any assessment of future proposals.

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Freedman	2009	64.5	325	D.10-09-044	20,963	2009	64.5	325	20,963
M. Freedman	2010	14.5	325	D.10-09-044	4,713	2010	14.5	325	4,713
<i>Subtotal: \$25,676</i>						<i>Subtotal: \$25,676</i>			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Freedman	2009	0.75	162.5	½ D.10-09-044 rate	122	2009	0.75	162.5	122
M. Freedman	2011	9.25	162.5	½ D.10-09-044 rate	1,503	2011	9.25	162.5	1,503
<i>Subtotal: \$1,625</i>						<i>Subtotal: \$1,625</i>			
COSTS									
Item					Amount \$	Amount \$			
Photocopies					22	22			
Postage					4	4			
<i>Subtotal: \$26</i>						<i>Subtotal: \$26</i>			
TOTAL REQUEST: \$27,327¹						TOTAL AWARD: \$27,327			

¹ Total was rounded to nearest dollar amount.

****Reasonable claim preparation time typically compensated at 1/2 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																
Comment 1	<p>Allocation of TURN Attorney Hours by Issue/Activity Code: TURN has allocated all of our attorney time by issue area or activity, as evident on our attached timesheets. The following codes relate to specific substantive issue and activity areas addressed by TURN:</p> <table border="1" data-bbox="331 863 1489 1902"> <thead> <tr> <th data-bbox="331 863 570 915">Code</th> <th data-bbox="570 863 1489 915">Explanation</th> </tr> </thead> <tbody> <tr> <td data-bbox="331 915 570 1041">SETT</td> <td data-bbox="570 915 1489 1041">Participation in settlement discussions with PG&E. Although no settlement was reached, TURN devoted time to this process in the hopes of achieving a settled outcome.</td> </tr> <tr> <td data-bbox="331 1041 570 1167">DTD</td> <td data-bbox="570 1041 1489 1167">Work responding to PG&E's request for a day-to-day extension of the ClimateSmart program past December 31, 2009 pending a final resolution of the overall application.</td> </tr> <tr> <td data-bbox="331 1167 570 1293">MAR</td> <td data-bbox="570 1167 1489 1293">Work devoted to analyzing PG&E's marketing efforts including the adequacy of its plan and the use of such funds for inappropriate and unrelated purposes.</td> </tr> <tr> <td data-bbox="331 1293 570 1419">SHARE</td> <td data-bbox="570 1293 1489 1419">Work devoted to proposing additional shareholder contributions to the program and clarifying the timing and measurement of the shareholder obligation.</td> </tr> <tr> <td data-bbox="331 1419 570 1545">EFF</td> <td data-bbox="570 1419 1489 1545">Work devoted to analyzing the effectiveness of the program to date, the costs of customer acquisitions, and assessing likely future effectiveness based on data provided by PG&E.</td> </tr> <tr> <td data-bbox="331 1545 570 1703">WORK</td> <td data-bbox="570 1545 1489 1703">Preparation for, and participation in, the October 22, 2009 Workshop ordered by the ALJ. The workshop was held in lieu of evidentiary hearings. TURN presented at the workshop, provided handouts and addressed a range of issues.</td> </tr> <tr> <td data-bbox="331 1703 570 1902">GP</td> <td data-bbox="570 1703 1489 1902">General Participation work essential to participation that typically spans multiple issues and/or would not vary with the number of issues that TURN addresses. This includes reading the initial application, Commission rulings, participating in prehearing conferences, and reviewing pleadings submitted by other parties.</td> </tr> </tbody> </table>	Code	Explanation	SETT	Participation in settlement discussions with PG&E. Although no settlement was reached, TURN devoted time to this process in the hopes of achieving a settled outcome.	DTD	Work responding to PG&E's request for a day-to-day extension of the ClimateSmart program past December 31, 2009 pending a final resolution of the overall application.	MAR	Work devoted to analyzing PG&E's marketing efforts including the adequacy of its plan and the use of such funds for inappropriate and unrelated purposes.	SHARE	Work devoted to proposing additional shareholder contributions to the program and clarifying the timing and measurement of the shareholder obligation.	EFF	Work devoted to analyzing the effectiveness of the program to date, the costs of customer acquisitions, and assessing likely future effectiveness based on data provided by PG&E.	WORK	Preparation for, and participation in, the October 22, 2009 Workshop ordered by the ALJ. The workshop was held in lieu of evidentiary hearings. TURN presented at the workshop, provided handouts and addressed a range of issues.	GP	General Participation work essential to participation that typically spans multiple issues and/or would not vary with the number of issues that TURN addresses. This includes reading the initial application, Commission rulings, participating in prehearing conferences, and reviewing pleadings submitted by other parties.
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	COMP	Preparation of compensation request and TURN's notice of intent.
	*	Attorney work allocated as follows - 33% to MAR, 33% to SHARE, and 33% to EFF.

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 Decisions (D.) 09-11-018 and 10-10-025.
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 \$27,327.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$27,327.
2. Within 30 days of the effective date of this decision, 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 March 19, 2011, 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. This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1104027	Modifies Decision? No
Contribution Decision(s):	D0911018 and D1010025	
Proceeding:	A0905016	
Author:	ALJ Katherine Kwan MacDonald	
Payer:	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	01-03-11	\$27,327	\$27,327	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Matthew	Freedman	Attorney	The Utility Reform Network	2009	\$325	2009
Matthew	Freedman	Attorney	The Utility Reform Network	2010	\$325	2010

(END OF APPENDIX)