

Decision 12-05-033 May 24, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to implement Senate Bill No. 1488 (2004 Cal. Stats. Ch. 690 (Sept. 22, 2004)) relating to confidentiality of information.	Rulemaking 05-06-040 (Filed June 30, 2005)
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**DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR
INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISIONS 06-12-030, 08-04-023, AND 11-07-028**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 06-12-030, D.08-04-023, D.11-07-028
Claimed: \$28,571.70	Awarded: \$28,424.20 (0.5% reduction)
Assigned Commissioner: Michael Peevey	Assigned ALJ: Hallie Yacknin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decisions:	<p>The decisions that are the subject of this request for intervenor compensation addressed issues either left open by Decision (D.) 06-06-066 or re-opened in subsequent decisions. D.06-06-066 left open the question of which individuals and entities are “market participants” and which are “non-market participants” for the purposes of access to sensitive data and initiated Phase 2 of this rulemaking to resolve this issue. D.06-06-066 also directed parties, as part of Phase 2, to meet and confer to develop a model protective order (MPO) and non-disclosure agreements (NDA).</p> <p>D.06-12-030 prohibited the disclosure of market sensitive information to market participants, with a narrow exception for representatives of market participants. D.08-04-023 adopted a model protective order and NDA for all data addressed in D.06-06-066 and D.06-12-030 and resolved a Petition for Modification filed by Alliance for Retail Energy Markets. Finally, D.11-07-028 modified D.06-12-030 regarding conditions of access to market sensitive information, and directed parties to develop an updated version of the Model Protective Order approved in D.08-04-023 to reflect these changes, and a new Model NDA.</p>
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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 (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	September 21, 2005	Correct
2. Other Specified Date for NOI:	----	
3. Date NOI Filed:	October 21, 2005	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:	R.05-06-040	Correct
6. Date of ALJ ruling:	November 22, 2005	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:	R.05-06-040	Correct
10. Date of ALJ ruling:	November 22, 2005	Correct
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.11-07-028	Correct
14. Date of Issuance of Final Decision:	July 25, 2011	Correct
15. File date of compensation request:	September 23, 2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059)

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
<p>In D.06-06-066, the Commission asked parties to submit comments on issues surrounding the definition of a “market participant” for purposes of having access to confidential procurement-related data. The Commission addressed this issue in D.06-12-030.</p> <p>On the question of whether direct access customers were automatically “market participants, the Commission agreed with TURN that the possibility of such customers gaining access to information they could then use to the detriment of bundled service customers was too attenuated to prohibit them from gaining access to the data.</p> <p>The Commission also agreed with TURN’s proposed test for determining whether a trade association should be deemed a “market participant,” and TURN’s proposed outcomes with regard to California Manufacturers and Technology Association, California Large Energy Consumers Association, Independent Energy Producers Association, the Cogeneration Association of California and Energy Producers and Users Coalition.</p> <p>TURN’s comments on the PD raised concerns that the exception to the general definition of a market participant contained a troubling loophole, and proposed clarification for simultaneous representation of market participants and non-participants. The Commission agreed with TURN on both points, and modified the language in the final decision.</p>	<p>TURN Comments, August 4, 2006.</p> <p>D.06-12-030, p. 15.</p> <p>D.06-12-030, pp 23-32.</p> <p>TURN Comments on PD (11/7/06).</p> <p>D.06-12-030, p. 43 and 45.</p>	<p>Yes</p>
<p>2. After a long hiatus, a ruling issued proposing to close the proceeding without having issued a Model Protective Order. TURN joined with a number of other parties in opposing such an approach.</p> <p>In D.08-04-023, the Commission addressed the other issues left open in D.06-06-066, adopting a model protective order and NDA, resolving a petition for modification, and confirming certain Administrative Law Judge (ALJ) rulings.</p> <p>As the decision notes, parties devoted a substantial amount of</p>	<p>“Participating Parties Proposed Language to Disputed Provisions of the Model Protective Order,” 9/5/06</p> <p>Proposed Model</p>	<p>Yes</p>

<p>time to negotiating the terms of a model protective order. The decision adopts certain modifications to the proposed model submitted by the parties, without ascribing the changes to any particular party.</p>	<p>Protective Order, 07/31/07. D.08-04-023, pp. 5-11.</p>	
<p>3. D.09-03-046 granted limited rehearing of D.06-12-030, which had defined “market participants.” The scoping memo issued for this rehearing phase identified seven issues from D.09-03-046, an additional seven issues identified by the ALJ, and two issues raised at the prehearing conference. TURN participated in the development and presentation of joint briefs with other parties that shared similar views on the revived issues – the investor-owned utilities (IOUs), Division of Ratepayer Advocates (DRA), and Coalition of California Utility Employees.</p> <p>After briefing in July of 2009, a proposed decision (PD) issued in late September of that year. TURN’s comments on the PD supported the separately-filed comments from the IOUs, and addressed discrete additional issues.</p> <p>From late October 2009 (when reply comments on the PD were filed) to August 2010, the PD was in something of a state of suspense. A revised PD issued in August 2010, and an Alternate Decision issued eight months later. The Commission issued D.11-07-028 reflecting elements of the revised PD and the Alternate. It cited with favor the positions taken by TURN (as one of the “Coalition Parties”) regarding the impossibility of protecting market sensitive information by permitting persons to become Reviewing Representatives even though they actually engage in wholesale marketing activities or commercial negotiations with the utilities. It also generally agreed with the Coalition Parties’ arguments that reasonable confidentiality rules do not implicate the due process rights of market participant parties. The decision quotes with favor the language from the <i>Spears</i> decision cited in the Coalition Parties’ opening brief. And the decision agrees in principle with the Coalition Parties’ position that the confidentiality procedures should extend to all market sensitive information, although it clarified that a party merely designating information as “market sensitive does not control such treatment</p> <p>The Alternate Decision would have changed the revised PD by abandoning the effort to convert the model protective order to a model NDA. TURN’s comments on the Alternate Decision objected to that element of the Alternate, and called for approval of the model NDA as attached to the PD. In D.11-07-028 directed the parties to pursue a collaborative</p>	<p>Joint PHC Statement, 5/8/09; Scoping Memo and Ruling, 05/21/09.</p> <p>Joint Opening Brief, 07/02/09; Joint Closing Brief, 07/30/09.</p> <p>TURN Comments 10/19/09.</p> <p>Joint Opening Brief, (07/02/09).</p> <p>Joint Closing Brief, 07/30/09.</p> <p>D.11-07-028, pp. 14, 16-17, 19, and 33.</p> <p>Alternate Decision (Digest of Differences with PD); TURN Comments, 5/12/11; D.11-07-028, pp. 3, 6 and Ordering</p>	<p>Yes</p>

<p>process to update the model protective order consistent with the decision and to pursue a new model NDA.</p> <p>The collaborative process is underway with TURN as an active participant.</p>	<p>Paragraph 6.</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was the DRA a party to the proceeding?</p>	<p>Y</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding?</p>	<p>Y</p>	<p>Correct</p>
<p>c. Names of other parties: There were a large number of parties to this proceeding. The parties representing the interests of small consumers were TURN, Californians for Renewable Energy, and DRA.</p>		<p>Correct</p>
<p>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 coordinated with DRA, the IOUs, and other parties that had views similar to ours on these issues regarding the appropriate treatment of confidential information. Throughout the period from 2006-2010, TURN’s participation focused primarily on pleadings jointly submitted with other parties. TURN’s coordination efforts permitted us to record relatively few hours over the five years covered by this phase of the proceeding.</p> <p>In sum, the Commission should find that TURN took all reasonable steps to avoid duplication and, to the extent that there was any overlap, TURN’s work supplemented and complemented that of DRA and the other parties who generally shared TURN’s views on the issues addressed by TURN.</p>		<p>Yes</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>Explanation by Claimant of how the cost of Claimant’s participation bore a reasonable relationship with benefits realized through participation</p>	<p>CPUC Verified</p>
<p>Assigning a specific dollar value to TURN’s participation in this proceeding is extremely difficult because of the nature of the issues under consideration in this rulemaking. But there should be no doubt that ratepayers had a strong interest in the proceeding’s outcome. On the one hand, establishing workable and effective confidentiality rules better ensures that the Commission’s processes will achieve just and reasonable rates. The ultimate goal of such efforts is to ensure sufficient access to market sensitive information while ensuring that such information does not fall into the hands of parties who can use it to take advantage of the market and, in doing so, drive up costs for consumers. On the other hand, there are direct but relatively smaller benefits to ratepayers from the cost savings associated with having uniform and</p>	<p>We find that the claim is reasonable.</p>

consistent rules governing the use of confidential information.	
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B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
Michel Florio	2006	20.75	\$485.00	D.06-11-032	\$10,063.75	2006	20.75	\$485.00	\$10,063.75
Michel Florio	2007	4.50	\$520.00	D.08-04-027	\$2,340.00	2007	4.50	\$520.00	\$2,340.00
Michel Florio	2008	2.00	\$535.00	D.08-07-043	\$1,070.00	2008	2.00	\$535.00	\$1,070.00
Michel Florio	2009	16.25	\$535.00	D.09-11-029	\$8,693.75	2009	16.25	\$535.00	\$8,693.75
Michel Florio	2010	1.75	\$535.00	D.10-05-012	\$936.25	2010	1.75	\$535.00	\$936.25
Robert Finkelstein	2007	1.50	\$435.00	D.07-12-026	\$652.50	2007	1.50	\$435.00	\$652.50
Nina Suetake	2011	7.00	\$295.00	Comment 3	\$2,065.00	2011	7.00	\$295.00	\$2,065.00
Hayley Goodson	2011	3.25	\$295.00	D.10-12-015	\$958.75	2011	2.75	\$295.00	\$811.25
<i>Subtotal:</i>					\$26,780.00	<i>Subtotal:</i>			\$26,632.50
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
R. Finkelstein	2011	7.50	\$235	D.11-09-037	\$1,762.50	2011	7.50	\$235	\$1,762.50
<i>Subtotal:</i>					\$1,762.50	<i>Subtotal:</i>			\$1,762.50
COSTS									
#	Item	Detail			Amount	Amount			
1	Photocopies				\$29.20				\$29.00
<i>Subtotal:</i>					\$29.20	<i>Subtotal:</i>			\$29.20
TOTAL REQUEST :					\$28,571.70	TOTAL AWARD :			\$28,424.20
<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 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.</p> <p>** Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate (the same applies to the travel time).</p>									

C. Additional Comments on Part III:

#	Claimant	Description/Comment														
1	X	<p><u>Reasonableness of TURN's Hours</u></p> <p>Michel Peter Florio was the primary attorney assigned to this proceeding and was solely responsible for drafting all of TURN's pleadings in this docket.</p> <p>When Mr. Florio left TURN's staff to join the CPUC, Nina Suetake assumed responsibility for the proceeding. Robert Finkelstein recorded hours in 2007 when he covered a single event in Mr. Florio's absence. Hayley Goodson has assumed responsibility for the post-decision collaboration to modify the model protective order and develop a model NDA.</p> <p>TURN had originally assigned Ms. Suetake to prepare the request for compensation. However, due to her workload, the request was prepared by Mr. Finkelstein.</p>														
2	X	<p>Allocation of Hours</p> <table border="1" data-bbox="440 800 1443 1472"> <tr> <td data-bbox="440 800 631 911">Mkt Part</td> <td data-bbox="631 800 1443 911">Market Participant – Issues regarding the appropriate definition of market participant as the term is used in the confidentiality statute.</td> </tr> <tr> <td data-bbox="440 911 631 1022">Model PO</td> <td data-bbox="631 911 1443 1022">Model Protective Order – Development of the proposed terms of the model protective order called for in D.06-06-066.</td> </tr> <tr> <td data-bbox="440 1022 631 1134">Ph 2</td> <td data-bbox="631 1022 1443 1134">Phase 2 – Work of a generally procedural nature in Phase 2, such as reviewing the scoping memo and parties' comments thereon.</td> </tr> <tr> <td data-bbox="440 1134 631 1205">PFM</td> <td data-bbox="631 1134 1443 1205">Response to the petition for modification filed by ESPs seeking modifications to D.06-06-066.</td> </tr> <tr> <td data-bbox="440 1205 631 1316">RH</td> <td data-bbox="631 1205 1443 1316">Rehearing – Work on issues revived when the Commission granted rehearing. Most of this work was related to the Market Participant definitional issues.</td> </tr> <tr> <td data-bbox="440 1316 631 1428">Model NDA</td> <td data-bbox="631 1316 1443 1428">Model Non-Disclosure Agreement – Collaborative effort to develop proposed terms of a Model PO and Model NDA, pursuant to the directive of D.11-07-028.</td> </tr> <tr> <td data-bbox="440 1428 631 1472">Comp</td> <td data-bbox="631 1428 1443 1472">Time devoted to compensation-related pleadings.</td> </tr> </table>	Mkt Part	Market Participant – Issues regarding the appropriate definition of market participant as the term is used in the confidentiality statute.	Model PO	Model Protective Order – Development of the proposed terms of the model protective order called for in D.06-06-066.	Ph 2	Phase 2 – Work of a generally procedural nature in Phase 2, such as reviewing the scoping memo and parties' comments thereon.	PFM	Response to the petition for modification filed by ESPs seeking modifications to D.06-06-066.	RH	Rehearing – Work on issues revived when the Commission granted rehearing. Most of this work was related to the Market Participant definitional issues.	Model NDA	Model Non-Disclosure Agreement – Collaborative effort to develop proposed terms of a Model PO and Model NDA, pursuant to the directive of D.11-07-028.	Comp	Time devoted to compensation-related pleadings.
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Model NDA	Model Non-Disclosure Agreement – Collaborative effort to develop proposed terms of a Model PO and Model NDA, pursuant to the directive of D.11-07-028.															
Comp	Time devoted to compensation-related pleadings.															
3	X	<p><u>Hourly Rates for TURN's Attorneys:</u></p> <p>TURN's request for compensation uses hourly rates for its attorney at levels previously authorized in prior Commission decisions for work performed in 2010 or before.</p> <p><u>Nina Suetake's 2011 Hourly Rate</u></p> <p>TURN seeks an increase of Ms. Suetake's hourly rate to \$295 for her work performed in 2011. A similar request is included in TURN's request for compensation in R.09-08-009. In D.08-04-010, the Commission had provided for up</p>														

	to two annual 5% “step increases” in hourly rates within each experience level for all intervenor representatives, and specifically explained that an attorney would be eligible for additional step increases upon reaching the next higher experience level. D.08-04-010, pp. 2, 11-12. TURN seeks a 5% step increase (rounded to the nearest \$5 increment). This is the first step increase TURN has sought for Ms. Suetake upon reaching this experience level.
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D. CPUC Comments and Disallowances:

Items	Reason
Hourly rate	TURN requests an hourly rate of \$295 for Suetake’s work in 2011, which represents a 5% step increase applied to her previously adopted rate of \$280. We accept TURN’s justification for the requested rate increase and find the rate of \$295 reasonable.
Clerical Task	We remove the estimated 0.50 hour spent by Goodson on the non-reimbursable clerical task of circulating a document. ¹ We note that this task was combined in one timesheet record (of September 22, 2009) with other activities, which violates the provisions of Rule 17.4(b).

PART IV: OPPOSITIONS AND COMMENTS

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

1. The Utility Reform Network has made a substantial contribution to Decisions 06-012-030, 08-04-023, and 11-07-028.
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 \$ 28,424.20.

1 See, e.g., D.98-11-049, 1998 Cal. PUC LEXIS 805, *5.1.3 (“Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work.”).

CONCLUSION OF LAW

The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded \$ 28,424.20.
2. Within 30 days of the effective date of this decision, the total awarded amount should be paid to The Utility Reform Network from the Commission's intervenor compensation fund, as described in D.00-01-020. 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 December 7, 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 decision is effective today.

Dated May 24, 2012, at San Francisco, California.

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

I abstain.

MICHEL PETER FLORIO
Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1205033	Modifies Decision?	No
Contribution Decisions:	D0612030, D0804023, D1107028		
Proceeding:	R0506040		
Author:	ALJ Hallie Yacknin		
Payer:	CPUC Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	9/23/11	\$28,571.70	\$28,424.20	No	Clerical task non-compensable

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	\$435.00	2007	\$435.00
Robert	Finkelstein	Attorney	The Utility Reform Network	\$470.00	2011	\$470.00
Michel	Florio	Attorney	The Utility Reform Network	\$485.00	2006	\$485.00
Michel	Florio	Attorney	The Utility Reform Network	\$520.00	2007	\$520.00
Michel	Florio	Attorney	The Utility Reform Network	\$535.00	2008	\$535.00
Michel	Florio	Attorney	The Utility Reform Network	\$535.00	2009	\$535.00
Michel	Florio	Attorney	The Utility Reform Network	\$535.00	2010	\$535.00
Nina	Suetake	Attorney	The Utility Reform Network	\$295.00	2011	\$295.00
Hayley	Goodson	Attorney	The Utility Reform Network	\$295.00	2011	\$295.00

(END OF APPENDIX)