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Decision 05-03-016 March 17, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authorized Capital Structure, Rate of Return on Common Equity, Embedded Cost of Debt and Preferred Stock, and Overall Rate of Return for Utility Operations for 2005.	Application 04-05-021 (Filed May 10, 2004)
Application of Pacific Gas and Electric Company for Authority to True-up its Cost of Capital for 2004 and to Establish its Authorized Cost of Capital for 2005.	Application 04-05-023 (Filed May 12, 2004)

OPINION GRANTING INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTION TO DECISION 04-12-047

I. Summary

We award Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN), or Aglet-TURN, jointly $73,558,[1] for their substantial contribution to Decision (D.) 04-12-047.

II. Background

Individual cost of capital applications were filed by Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E). SCE requested authority to maintain its 11.60% Return on Equity (ROE) for its test

[1] Amounts are rounded to the nearest dollar.

year 2005. PG&E requested authority to true up its 2004 capital structure in conformance with its adopted Chapter 11 exit financing plan while maintaining its interim 11.22% ROE and authority to increase that ROE to 11.60% for its test year 2005.

SCE and PG&E included in their respective applications a request for the Commission's recognition and mitigation of debt equivalence, which is risk purportedly associated with long-term non-debt obligations such as capacity payments for purchased power contracts. San Diego Gas & Electric Company (SDG&E) intervened into this consolidated proceeding for the purpose of addressing debt equivalence as it related to SDG&E.

By D.04-12-047, a test year 2005 ROE of 11.40% for SCE, a true up year 2004 and test year 2005 ROE of 11.22% for PG&E, and a debt equivalence process for SCE, PG&E, and SDG&E were adopted.

SCE, PG&E, SDG&E, the Office of Ratepayer Advocates (ORA), Aglet-TURN, the Cogeneration Association of California (CAC), and Calpine Corporation actively participated in this proceeding. Only Aglet-TURN requested compensation.

III. Requirements for Award of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervener's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

IV. Procedural Requirements

The first four requirements are procedural. The prehearing conference in this matter was held on July 22, 2004. Aglet-TURN filed their joint NOI timely on May 14, 2001. In their joint NOI, Aglet-TURN asserted financial hardship. On August 3, 2004, Administrative Law Judge (ALJ) Galvin found Aglet-TURN are Category III customers under the Public Utilities Code and meet the significant financial hardship condition.

A final decision (D.04-12-047) in this matter was issued on December 16, 2004. Aglet-TURN filed their joint request for compensation on January 21, 2005, within the required 60 days of a final decision being issued.

Aglet-TURN thus have satisfied all the procedural requirements necessary to make their joint request for compensation.

V. Substantial Contribution to Resolution of Issues

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(h) and 1802.5.) As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[2]

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could

[2] See D.98-04-059, 79 CPUC2d, 628 at 653.

find that the customer made a substantial contribution.[3] With this guidance in mind, we turn to the claimed contributions Aglet-TURN made to this proceeding.

A. AGLET-TURN's Argument on Substantial Contribution

Aglet-TURN were the only party that opposed an 11.60% ROE requested by SCE and supported by ORA. Although Aglet-TURN's 10.60% recommended ROE was not adopted, their financial model results and ROE recommendation were used in the adoption of a broad ROE range based on their model and SCE's. Using that broad ROE range, we adopted a test year 2005 ROE of 11.40%, which is lower than the 11.60% ROE requested by SCE and supported by ORA. *See* Findings of Fact 31, Conclusion of Law 16, and Ordering Paragraph 1 of D.04-12-047.

Aglet-TURN also claimed a substantial contribution in regards to PG&E's 2005 ROE. ORA joined Aglet-TURN in opposing PG&E's requested 11.60% ROE for test year 2005. Similar to SCE, the adoption of a broad ROE range was based on the financial model results of PG&E, Aglet-TURN and ORA. We adopted a test year 2005 ROE of 11.22%, which is lower than the 11.60% ROE requested by PG&E. Aglet-TURN's substantial contribution here is shown in Findings of Fact 31, Conclusion of Law 18, and Ordering Paragraph 3 of D.04-12-047.

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[3] *See* D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

Aglet-TURN also claimed a substantial contribution in regards to debt equivalence. Although SCE, PG&E, and SDG&E request approval of a specific method for calculating the debt equivalence effects of purchased power contracts on credit quality, ORA, the CAC, and Aglet-TURN opposed a formulaic approach and recommended that debt equivalence be considered on a case-by-case basis. In that regard, the Commission specifically concurred with ORA and Aglet-TURN as discussed on page 7 and set forth in Conclusion of Law 8 of D.04-12-047. Further, that decision adopted specific debt equivalence findings and conclusions testified to by Aglet-TURN, many of which were cited without change in the decision. *See* Findings of Fact 7 and 8, which repeat the recommendations of Aglet-TURN without change, and Findings of Fact 9 and 14 of D.04-12-047.

As stated by Aglet-TURN in their joint compensation request, their evidence and arguments on market conditions, trends, creditworthiness, interest rate forecasts, quantitative financial models based on subjective inputs and risk factors, and their debt equivalence testimony have assisted us in this proceeding. In fact, every substantive position advocated by Aglet-TURN affected D.04-12-047, even where (as is commonly the case in cost of capital proceedings) our adopted ROE falls somewhere between the ROE requested by the utility and that recommended by Aglet-TURN. We find that Aglet-TURN jointly made a substantial contribution to D.04-12-047.

VI. Reasonableness of Requested Compensation

Aglet-TURN requests $73,558[4] for their joint participation in this proceeding. To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation.

Aglet-TURN attempted to determine the numeric impact of their joint showing in this proceeding regarding debt equivalence; however, they could not do so. They did quantify the most observable dollar benefit of their participation regarding SCE and PG&E's ROE. In regards to SCE, Aglet-TURN were the only parties recommending a reduction in SCE's requested 11.60% ROE. The reduction of SCE's 2005 ROE to 11.40% from 11.60% resulted in a $14.7 million revenue requirement savings. In regards to PG&E, ORA and Aglet-TURN recommended a reduction in PG&E's requested 11.60% ROE. The reduction of PG&E's requested ROE to 11.22% ROE resulted in a $42.2 million annual revenue requirement benefit to ratepayers.

The annual ratepayer revenue requirement benefit identified by Aglet-TURN substantiates that the costs of their joint participation are reasonable in relationship to the benefits ratepayers will realize through that participation.

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the

[4] This amount is $8 more than the $73,550 amount Aglet-TURN budgeted in their NOI.

customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Aglet-TURN documented their claimed hours by presenting a daily breakdown of the hours, major activity, and description of work their attorneys and advocates devoted to the proceeding. To facilitate a detailed review of their fee request, Aglet-TURN provided a summary of requested professional hours by major issues and professionals as follows.

	Weil	Czahar	Finkelstein	Marcus	
Activity					**Total**
General Work	25.7	-	3.5	-	29.20
Quantitative	65.7	66.0	-	-	131.70
Qualitative	68.8	-	-	-	68.80
Debt Equivalence	40.6	-	-	2.25	42.85
Other Issues	8.6	-	-	-	8.60
Travel & Comp.	28.8	-	-	-	28.80
TOTAL	238.2	66.0	3.5	2.25	309.95

Aglet-TURN believe that the total number of their claimed hours is reasonable given the scope of this proceeding. Our prior discussion of Aglet-TURN's substantial contribution and productivity substantiate that Aglet-TURN's hours are reasonable. We make no adjustment to the requested hours of Weil, Czahar, Finkelstein, and Marcus.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Aglet-TURN seeks an hourly rate of $250 for work performed by Weil in 2004 and half the rate for his travel time and work on the compensation request in 2004 and 2005; $220 for Czahar in 2004; $395 for Finkelstein in 2004; and $195 for Marcus in 2004. The Commission has previously approved these rate for work performed by Weil and Czahar.[5] We find these rates reasonable.

[5] *See* D.04-12-039, *mimeo.*, p. 6 through 8 and D.03-07-010, *mimeo.*, p. 14, respectively.

Aglet-TURN seeks a $395 hourly rate for work performed by Finkelstein in 2004, which represents a $30 increase over the $365 hourly rate approved for work undertaken by Finkelstein in 2003.[6] Finkelstein, TURN's Director, reviewed and provided input into the Aglet-TURN joint draft opening and reply briefs and on the issue of debt equivalence to ensure that TURN's position was adequately represented in the joint Aglet-TURN briefs. In Resolution ALJ-184, adopted August 19, 2004, the Commission indicated that hourly rates requested for 2004 that were as much as 8% greater than adopted 2003 rates would be considered reasonable. The requested 2004 hourly rate of $395 for Finkelstein is consistent with that guideline and should be adopted.

Aglet-TURN seeks a $195 hourly rate for work performed by Marcus in 2004, which represents a $10 increase over the $185 hourly rate approved for work undertaken by Marcus in 2003.[7] In support of the $10 increase in Marcus's hourly rate for his work in 2004, Aglet-TURN summarized his educational accomplishments that included Marcus' 1974 graduation from Harvard College with an A.B. magna cum laude in economics and a 1974 M.A. in Economics from the University of Toronto. In regards to work experience, Marcus has been involved in the field of energy policy and utility regulation for the past 20 years, first as an economist with the California Energy Commission and, since 1984, as a Principal Economist supervising the work of five analysts with responsibility for all utility issues for JBS Energy, Inc. Marcus has also appeared before this Commission as an expert witness on several occasions. Based on the these

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[6] See D.03-08-041, *mimeo.*, p. 10.

[7] See D.03-10-011 at *mimeo.*, p. 13.

accomplishments and experience of Marcus, Aglet-TURN represents that a $10 per hour increase in Marcus' 2003 hourly rate of $185 will keep the hourly rate for Marcus within reasonable bonds for consulting services of professional economists and is reasonable given his credentials and work record. The requested $10 per hour increase is within the parameters of ALJ-184 and should be adopted. Marcus should be awarded a $195 hourly rate for his 2004 work in this proceeding.

Aglet-TURN also seek recovery of their office costs incurred as a result of their participation in this proceeding. These costs totaling $1,266 consist of reproduction (copy) cost, postage, and travel costs. These costs represent less than 1.7% of their total compensation request. Aglet-TURN adequately substantiated their office costs and should be compensated for the full $1,266.

VII. Award

Aglet-TURN substantially assisted the Commission in this proceeding. Consistent with § 1802(h), Aglet-TURN are jointly entitled to compensation that totals $73,535, as set forth in the table below.

ITEM	YEAR	HOURS	RATE	TOTAL AMOUNT
Advocate	2004	209.40	$250	$52,350
Weil	2004	19.80	125	2,475
	2005	9.00	125	1,125
Attorney Finkelstein	2004	3.50	395	1,383
Consultant Marcus	2004	2.25	195	439
Analyst Czahar	2004	66.00	220	14,520
Office Costs:				
Copies & Fax				780
Postage				184
Telephone				9
Travel				293
TOTAL				$73,558

SDG&E participated in this consolidated proceeding by providing testimony, cross examining witnesses, and submitting briefs. Also, it must satisfy specific requirements in regards to debt equivalence as set forth in D.04-12-047. As such, SDG&E normally would be required to pay a proportionate share of the award applicable to debt equivalence. Because Aglet-TURN did not claim that they represented consumers, customers or subscribers of SDG&E in their joint NOI, and because this proceeding does not include an application by SDG&E, we do not require SDG&E to participate in the payment of compensation. We assess the responsibility for payment between SCE and

PG&E, based on each utility's share of 2004 jurisdictional electric and gas revenues.[8] SCE and PG&E shall pay their full shares of the award to Aglet.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Aglet-TURN filed their joint compensation request and continuing until full payment of the award is made.

We remind Aglet-TURN that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet-TURN's records should identify specific issues for which they requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VIII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

IX. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

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[8] Although SDG&E is not a named applicant in this consolidated proceeding, it did intervene, provide testimony, participate in the cross examination of witnesses, submitted briefs, and is required to satisfy specific requirements in regards to debt equivalence as set forth in the final decision.

Findings of Fact

1. Aglet-TURN represents consumers, customers, or subscribers of SCE and PG&E, which are regulated by the Commission.

2. Aglet-TURN did not claim to represent consumers, customers or subscribers of SDG&E.

3. Aglet-TURN filed their joint NOI to claim compensation on July 22, 2004, and their request for compensation on January 20, 2005.

4. The individual economic interests of the individual members of Aglet-TURN are small in comparison to the costs incurred in effectively participating in this proceeding.

5. Aglet-TURN made a substantial contribution to D.04-12-047.

6. Aglet-TURN's requested hourly rates for their attorneys and experts are reasonable when compared to the market rates for persons with similar training and experience. Aglet-TURN's requested costs of participation are reasonable.

7. The total of these reasonable fees and costs is $73,558.

Conclusions of Law

1. Aglet-TURN fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which governs awards of intervenor compensation, and are entitled to intervenor compensation for their claimed fees and expenses incurred in making substantial contribution to D.04-12-047.

2. So that Aglet-TURN's award may be paid promptly, today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) are jointly awarded $73,558 as compensation for their joint substantial contribution to Decision 04-12-047.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) shall pay Aglet-TURN $73,558 in proportion to their respective 2004 jurisdictional electric and gas revenues within 30 days of the effective date of this order. SCE and PG&E shall pay their full shares of the award to Aglet and Aglet shall disburse the portions between Aglet and TURN as appropriate. SCE and PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15 commencing April 5, 2005 and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. Application (A.) 04-05-021 and A.04-05-023 are closed.

This order is effective today.

Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Compensation Decision:	D0503016
Contribution Decision(s):	D0412047
Proceeding(s):	A0405021 and A0405023
Author:	ALJ Galvin
Payer(s):	Southern California Edison Company, Pacific Gas and Electric Co., and San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance and The Utility Reform Network (Aglet-TURN)	1/20/2005	$73,558	$73,558	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Advocate	Aglet-TURN	$250	2004	$250
Bob	Finkelstein	Attorney	Aglet-TURN	$395	2004	$395
William	Marcus	Analysis	Aglet-TURN	$195	2004	$195
Ray	Czahar	Analysis	Aglet-TURN	$220	2004	$220