ALJ/MLC/tcg **Mailed 10/7/2005**

Decision 05-10-010 October 6, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of National Submetering and Utility Allocation Association Pursuant to Public Utilities Code Section 1708.5 to Adopt, Amend, or Repeal Regulations Governing the Provision of Submetered Gas and Electric Service found in Decisions 88651 and 93586.	Petition 04-08-038 (Filed August 26, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-05-026

This decision awards The Utility Reform Network (TURN) $22,361.07 in compensation for its substantial contributions to Decision (D.) 05-05-026. Today's award will be paid from the Commission's intervenor compensation program fund.

Background

D.05-05-026 denied the request by the National Submetering and Utility Allocation Association (Association) to open a rulemaking to consider rule changes to permit owners of existing master-metered multi-unit residential buildings to submeter electricity and natural gas service to individual tenants. The Association filed the petition in August 2004. On September 30, 2004, the Assigned Administrative Law Judge (ALJ) issued a ruling directing the Association to provide additional service of its petition on other service lists and asking several questions. On October 26, 2004, responses to the Petition and the

ALJ Ruling were filed; replies were filed on November 5, 2004. The decision found that opening a rulemaking was unnecessary to accomplish the relief sought. Instead, the decision defined "new installations" in the existing Master Meter/Submetering Tariffs to allow residential customers served under a utility Master Meter Tariff to convert to the existing Master Meter/Submetering Tariff if the building for which service is sought was constructed prior to the Master Meter/Submetering Tariff being closed. Although it denied the petition, the decision provided various clarifications about eligibility to convert to the Master Meter/Submeter Tariffs, consumer protection, removal of energy charges from rents, and notice requirements. This proceeding will be closed upon resolution of this request for compensation.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor'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. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

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(i), 1803(a).)

6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

Procedural Issues

No prehearing conference in this matter was held. TURN filed its NOI on July 26, 2005, concurrent with its request for compensation. The NOI is deemed timely.

Section 1802(b)(1) defines a "customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to it articles of incorporation or bylaws to represent the interests of residential or small business customers. In this case, TURN is a customer as defined in § 1802(b)(1)(C): it is an organization authorized by its

articles of incorporation[1] to represent the interests of consumers, a portion of which are residential customers.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Because the NOI was filed concurrent with TURN's request for compensation, TURN simply reported on its already concluded level of participation and costs. TURN participated by filing a response to the petition, a reply to responses, and comments and reply comments on the Draft Decision. Its work encompassed 126.83 hours of attorney and expert witness time and other costs.

In its NOI, TURN asserted financial hardship. In order to determine whether TURN is eligible for compensation, we must find that the economic interest of the individual members of the TURN is small in comparison to the costs of effective participation in the proceeding. TURN has elected not to make that showing, but instead relies, pursuant to § 1804(b)(1), on a rebuttable presumption of eligibility: Assigned ALJ Wetzell previously found that TURN had satisfied the significant financial hardship test on July 27, 2004, in Rulemaking (R.) 04-04-003. The subject proceeding commenced on June 16, 2005, within one year of the R.04-04-003 finding. Therefore, in accordance with

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[1] D.98-04-059 directed intervenors either to file their articles of incorporation with the NOI, or to provide a reference to a previous filing. (*Id.* at 30.) TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in Application (A.) 98-02-017 and again in A.99-12-024. TURN has approximately 30,000 dues paying members, the majority of which it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

§ 1804(b)(1), the rebuttable presumption created in R.04-04-003 applies here. No party rebuts this presumption, and we find that TURN meets the financial hardship condition.

TURN filed its request for compensation on July 26, 2005, within 60 days of D.05-05-026 being issued.[2] In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

Substantial Contribution

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(i).) 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(i) and 1802.5.) As described in § 1802(i), 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

[2] No party opposes the request.

> contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[3]

Should 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 find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN states that its involvement was extensive given the expedited nature of this proceeding. Although, according to TURN, it was not successful on every argument it presented, the decision reflects the significant impacts of TURN's advocacy. For example, TURN correctly identified the following areas where either the ALJ's draft decision and/or the ultimate Commission decision reflects TURN's position or recommendations: removal of energy charges from rental rates in order to address Pub. Util. Code § 739.5(a) requirements; notice requirements for Master Mater/Submeter customers to their tenants; eligibility of buildings originally constructed for a non-residential purpose for the Master Meter/Submeter tariff; identifying and requiring that the Commission address the applicability of § 1708.5 to the petition; and enforcement of consumer protections in the event submetered services are expanded.

TURN demonstrates that its involvement in this proceeding resulted in important consumer protections being identified and clarified. In the areas

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

where we did not adopt TURN's position, we benefited from TURN's analysis and discussion of all of the issues which it raised because the ultimate decision was required to address the issues and more effectively articulate the rationale for the decision. TURN made a substantial contribution as described above.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

Reasonableness of Requested Compensation

TURN requests $23,364.82 for its participation in this proceeding, as follows:

Hayley Goodson	51.00	hours X	$190	(2004) =	$9,690.00
Hayley Goodson	27.25	hours X	$220	(2005) =	$5,995.00
Hayley Goodson	8.00	hours X	$110	(2005) =	$880.00
Hayley Goodson Total					**$16,565.00**
Marcel Hawiger	0.50	hours X	$270	(2004) =	$135.00
Marcel Hawiger	0.25	hours X	$340	(2005) =	$85.00
Marcel Hawiger Total					**$220.00**
Robert Finkelstein	0.75	hours X	$395	(2004) =	$296.25
Robert Finkelstein	0.75	hours X	$425	(2005) =	$318.75
Robert Finkelstein Total					**$615.00**
Attorney Subtotal					**$17,400.00**
William Marcus, JBS Energy	2.08	hours X	$195.00	**(2004) =**	**$405.60**
William Marcus, JBS Energy Total					**$405.60**
Jeffrey Nahigian, JBS Energy	34.5	hours X	$140.00	**(2004) =**	**$4,830.00**
Jeffrey Nahigian, JBS Energy	1.75	hours X	$155.00	**(2005) =**	**$271.25**
Jeffrey Nahigian, JBS Energy Total					**$5,101.25**
Expert Witness Subtotal					**$5,506.85**

Legal Research (Lexis)	$230.43	
Photocopying expenses	$211.00	
Postage costs	$13.18	
Telephone expenses	$3.36	
Other Expenses Subtotal	**$457.97**	
TOTAL	**=**	**$23,364.82**

In general, 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. The issues we consider to determine reasonableness are listed below, followed by a separate discussion on each.

1. The hours and costs for which compensation is requested must be related to the customer's work, and necessary for the substantial contribution, as set forth in D.98-04-059.
2. The hourly rates requested must be reasonable under the "market rate" standard set forth in Pub. Util. Code § 1806.
3. The participation must be productive, as set forth in D.98-04-059, in that the amount requested is reasonable in relation to the benefits accruing to ratepayers by virtue of the substantial contribution.
4. Any other costs or expenses must be reasonable, directly incurred by the customer, and directly related to the substantial contribution. (§ 1802(d).)

Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. TURN provided a monthly summary of hours for its consultants. The hourly breakdown reasonably supports the claim for total hours.[4] Since we found that

[4] TURN separated the hours associated with preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

TURN's efforts made a substantial contribution to the delineated decision, we need not exclude from TURN's award compensation for certain issues. However, we note that TURN broke down its efforts by types of pleading and had we needed to eliminate certain hours from the award, this breakdown would have facilitated the process.

Market Rate Standard

We next take into consideration whether 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.

TURN seeks 2004 hourly rates of $190, $270, $395, $195, and $140 for Goodson, Hawiger, Finkelstein, Marcus, and Nahigian respectively. The Commission has previously approved these rates for work performed in 2004, and we find these rates reasonable.[5]

TURN seeks higher hourly rates for 2005, the same rates it requested in R.04-10-010 for these representatives. R.04-10-010 will establish the 2005 rates for representatives of parties eligible to request intervenor compensation. TURN suggests that we utilize whatever 2005 rates are adopted for its representatives in R.04-10-010 to set its 2005 rates in this award. A draft decision in R.04-10-010 is expected shortly. Pending that decision, we will utilize the adopted 2004 rates for TURN's representatives in this proceeding. Once a decision is adopted in R.04-10-010, TURN may petition to modify its award in this proceeding consistent with the adopted 2005 rates.

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[5] See D.04-12-033, D.05-06-031, D.05-04-049, D.05-06-031, and D.05-06-031, respectively.

Productivity

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. This showing assists us in determining the overall reasonableness of the request.

TURN states that its emphasis in this proceeding has been to ensure that consumer protections for utility end users are established and enforced. It concedes it cannot identify precise monetary benefits to ratepayers. TURN claims its focus on ensuring that master meter customers converting to submetered service comply with § 739.5 will indirectly benefit ratepayers because newly submetered tenants will receive notice of benefits they are entitled to as a result of being submetered. TURN also notes that ratepayers may benefit from submetered tenant participation in special rebate programs designed to encourage energy conservation and system peak demand reduction. We agree that to the extent energy usage is lowered through these types of programs, ratepayers benefit monetarily by avoiding energy costs. We also agree that notification of rights of a submetered tenants, improved through TURN's participation, have other social benefits which, though hard to quantify, are substantial. Thus, we find that TURN's efforts have been productive.

Direct Expenses

The itemized direct expenses submitted by TURN include costs for photocopying, postage, telephone, and legal research and total $457.97. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

Award

As set forth in the table below, we award TURN $22,361.07.

Advocate	Year	Hours	Rate	Total
Hayley Goodson	2004	51	$190	$9,690.00
Hayley Goodson	2005	27.25	$190	$5,177.50
Hayley Goodson	2005	8	$95	$760.00
Marcel Hawiger	2004	0.5	$270	$135.00
Marcel Hawiger	2005	0.25	$270	$67.50
Robert Finkelstein	2004	0.75	$395	$296.25
Robert Finkelstein	2005	0.75	$395	$296.25
William Marcus	2004	2.08	$195	$405.60
Jeffrey Nahigian	2004	34.5	$140	$4,830.00
Jeffrey Nahigian	2005	1.75	$140	$245.00

Legal Research (Lexis)	$230.43
Photocopying expenses	$211.00
Postage costs	$13.18
Telephone expenses	$3.36

TOTAL	$22,361.07

Consistent with previous Commission decisions, we 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 on October 9, 2005, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

This petition proceeding affected a broad array of energy utilities and did not have any named respondents. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

We remind all intervenors 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. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

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.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has met the eligibility requirements of § 1804(a). TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

2. TURN has established a rebuttable presumption of significant financial hardship. No party attempted to rebut the presumption, thus TURN has established that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g).

3. TURN made a substantial contribution to D.05-05-026 as described herein.

4. TURN requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

5. The total of the reasonable compensation is $22,361.07.

6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-05-026.

2. TURN should be awarded $22,361.07 for its contributions to D.05-05-026.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $22,361.07 as compensation for its substantial contributions to Decision (D.) 05-05-026.

2. Within 30 days of the effective date of this decision, TURN's award shall be paid from the intervenor compensation program 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 October 9, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated October 6, 2005, at Los Angeles, California.

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

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

Compensation Decision Summary Information

Compensation Decision:	D0510010	**Modifies Decision? No**
Contribution Decision(s):	D0505026	
Proceeding(s):	P0408038	
Author:	ALJ Cooke	
Payer(s):	Commission	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	7/26/2005	$23,364.82	$22,361.07	No	failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Hourly Fee Adopted	Year Hourly Fee Requested
Hayley	Goodson	Attorney	The Utility Reform Network	$190	2004	$190
Hayley	Goodson	Attorney	The Utility Reform Network	$220	2005	$190
Marcel	Hawiger	Attorney	The Utility Reform Network	$270	2004	$270
Marcel	Hawiger	Attorney	The Utility Reform Network	$340	2005	$270
Robert	Finkelstein	Attorney	The Utility Reform Network	$395	2004	$395
Robert	Finkelstein	Attorney	The Utility Reform Network	$425	2005	$395
William	Marcus	Economist	The Utility Reform Network	$195	2004	$195
Jeffrey	Nahigian	Economist	The Utility Reform Network	$140	2004	$140
Jeffrey	Nahigian	Economist	The Utility Reform Network	$155	2005	$140