

Decision 06-04-065 April 27, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39 E) for Rate and Line Extension Incentives for Conversion of Stationary Agricultural Internal Combustion Equipment to Electric Service.

Application 04-11-007  
(Filed November 9, 2004)

Application of Southern California Edison Company (U 338-E) for Rate and Line Extension Incentives for Conversion of Stationary Agricultural Internal Combustion Equipment to Electric Service.

Application 04-11-008  
(Filed November 9, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK AND  
THE AGRICULTURAL ENERGY CONSUMERS ASSOCIATION  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-06-016**

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**OPINION GRANTING INTERVENOR COMPENSATION TO  
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This decision awards The Utility Reform Network (TURN) compensation of \$46,277.58, and the Agricultural Energy Consumers Association (AECA) compensation of \$69,131.27, for their respective contributions to Decision (D.) 05-06-016.

**1. Background**

In D.05-06-016, we considered applications by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) for authority to offer reduced rates and additional line extension allowances to agricultural customers who converted engines used for pumping purposes from diesel fuel to electricity. Under the original proposals of PG&E and Edison, customers who converted in either utility's service territory were to receive a 20% reduction from the tariffs that would otherwise be applicable to the customers' engine use. PG&E and Edison proposed that the rate reductions should remain in effect for 10 years and should be subject to an annual escalation of 1.5%. Ratcheted demand charges were to be eliminated from the new rates, and converting customers were not to be subject to any deficiency charges.

Under the PG&E and Edison proposals, customers taking advantage of the conversion program were also entitled to a special line extension allowance – referred to as an “adder” – in addition to the usual allowances provided for in the utilities' tariffs. PG&E proposed to offer each customer signing up for its diesel conversion program an adder of \$32,935, and Edison proposed to offer its converting customers an adder of \$29,942. The utilities argued that as consideration for the rate reductions and adders, converting customers should be

required to destroy their old diesel engines, and to assign the resulting air emission reductions to the utilities. With the exception of carbon dioxide (CO<sub>2</sub>) reductions (which the utilities proposed to keep), the utilities would then transfer the emission reductions to the California Air Resources Board (CARB) or the customer's local air pollution control district.

Despite the air quality improvements that the engine conversion program promised in the San Joaquin and Sacramento Valleys, the applications drew protests from both the Office of Ratepayer Advocates (ORA),<sup>1</sup> and TURN. In its protest and subsequent testimony, ORA disputed the utilities' assertions that the proposed rate reductions would make a positive contribution to margin (CTM), and argued that without significant modifications, the conversion program would impose unacceptable new costs on ratepayers. TURN argued that the fixed adders proposed by the utilities would require ratepayers to pay widely varying amounts for the promised emission reductions. Rather than pay a fixed adder to all converting customers, TURN argued, the utilities should pay an adder based on the average cost of the reductions in oxides of nitrogen (NO<sub>x</sub>) that it was estimated the program would bring. TURN also advocated that the adder should be capped.

Before it became necessary to litigate these issues in hearings, the parties reached a settlement. The settlement agreement was filed on March 30, 2005, and a hearing on the settlement was held on April 7. Under the terms of the settlement agreement, the rate reduction portions of the utilities' proposals were retained, with converting customers in PG&E's service area receiving a 20%

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<sup>1</sup> ORA became the Division of Ratepayer Advocates, effective January 1, 2006, pursuant to Senate Bill 608.

reduction from the otherwise applicable tariffs for 10 years, and converting customers in Edison's service area receiving a 12.5% reduction over the same period. Instead of paying a single, flat adder to all converting customers, the utilities agreed under the settlement to pay one of three adders, based on the size of the electric motor replacing the old diesel engine. The settling parties also agreed that eligibility for the program would end in two years, or as soon as the total capital investment for the conversion program reached \$27.5 million for PG&E or \$9.17 million for Edison. (D.05-06-016, *mimeo.* at pp. 20-24.)

In approving this settlement, D.05-06-016 concluded that even with a modest participation rate, the engine conversion program was likely to result in a significant improvement in the air quality of the Sacramento and San Joaquin Valleys, which have some of the worst air quality in the nation. D.05-06-016 also concluded that the settlement did not expose ratepayers to undue risk, because eligibility for the conversion program would end in two years, or as soon as the \$25.7 million (for PG&E) or \$9.17 million (for Edison) caps were reached. (*Id.* at 25-33.)

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, which is set forth at §§ 1801-1812 of the Public Utilities Code, requires California jurisdictional utilities to pay the reasonable costs of a qualifying intervenor's participation in a Commission proceeding if the intervenor makes a substantial contribution to the proceeding. The statute also provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.<sup>2</sup>

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<sup>2</sup> Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

All of the following procedures and criteria must be satisfied before an intervenor may 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 the Commission specifies). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to Commission jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of the final order or decision in a Commission 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 contentions or recommendations in a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the intervenor’s 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).

### **3. Procedural Issues**

Prehearing conferences were held in these proceedings on January 14 and February 4, 2005. Pursuant to Pub. Util. Code § 1804(a), both TURN and AECA filed timely NOIs on February 14, 2005.

D.05-06-016 concluded that TURN's NOI met all of the requirements of § 1804(a).<sup>3</sup> First, TURN had presented a full statement of the nature of its planned participation on behalf of residential ratepayers, along with a budget for its participation. Second, TURN noted that on July 27, 2004, an Administrative Law Judge (ALJ) ruling had been issued in Rulemaking (R.) 04-04-003 which concluded that TURN had met the burden of demonstrating financial hardship. Under Pub. Util. Code § 1804(b)(1), such a finding creates "a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year" of the finding. Since these proceedings were commenced less than a year after the July 27, 2004 ruling, the rebuttable presumption applied to TURN. (*Mimeo.* at 34.)

D.05-06-016 also concluded that AECA had satisfied § 1804(a)'s requirements about the nature of and budget for AECA's participation in the proceeding, but noted that a significant additional showing would be required before a finding of significant financial hardship could be made. In particular, D.05-06-016 noted that AECA had not provided enough information about the extent of "the role water districts and agricultural associations play in determining AECA's affairs," and that without such information, a finding could not be made that AECA was authorized to represent small customers who would

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<sup>3</sup> Under § 1804(a), a party intending to seek compensation for its participation in a proceeding must include in its NOI (1) a showing that it is a customer or represents customers, (2) a statement of the nature and extent of the party's planned participation in the proceeding, and (3) an itemized estimate of the compensation the party expects to request, given the likely duration of the proceeding. In addition, the party may include a showing in the NOI that its participation in the proceeding would represent a significant financial hardship, but that showing may also be deferred until a compensation request is filed.

otherwise be underrepresented. The discussion of AECA's NOI closed by noting that the Commission "look[ed] forward to reviewing all of the material [on financial hardship] that AECA has represented will be in its compensation request." (*Id.* at 35-36.)

D.05-06-016 was issued on June 16, 2005. TURN filed its request for compensation in this proceeding on August 15, 2005, within the 60-day period specified in Pub. Util. Code § 1804(c). Thus, TURN's request for compensation is timely.

Although AECA's request for compensation was postmarked August 15, 2005 (and was also e-mailed to the service list on that date), it was not received in the Commission's Docket Office until a few days later. On August 24, 2005, AECA filed a motion requesting that its request for compensation be accepted for late filing. In view of the fact that AECA's request was both mailed and e-mailed on August 15, even though it did not arrive at the Docket Office until after that date, we will grant the motion.

#### **4. Financial Hardship Showing by AECA**

Under Pub. Util. Code § 1802(g), "significant financial hardship" is established when, "in the case of a group or organization, the economic interests of the individual members of the group or organization is small compared to the costs of effective participation in the proceeding."

Since AECA is a membership organization, the Commission has customarily evaluated its financial hardship claims by reviewing the annual utility bills of its individual members to determine whether the cost of effective participation in a proceeding is large in comparison to the economic interests of these individual members. In D.96-08-040, we described the process we have used for evaluating AECA's hardship claims as follows:

“Rather than granting the full amount of AECA’s requests . . . the Commission has first carefully identified those AECA members for whom the cost of participation far outweighs the prospective economic benefit. This requires estimating the amount of savings each member stands to realize as a result of the proceeding based on their annual utility use, and then comparing it to the estimated cost of participation for these members. After determining the percentage of AECA’s membership that faces a significant financial hardship, the Commission has reduced AECA’s final compensation on a pro-rata basis.” (*Mimeo.* at 10.)

In its request here, AECA points out that in several decisions over the past decade, the Commission has found that where an individual AECA member has annual electricity bills of less than \$50,000, that member’s economic interest has been considered small in comparison to the costs of participation.

*See*, D.95-02-093 (*mimeo.* at 8-13); D.96-02-011 (*mimeo.* at 2-4); D.96-08-040 (*mimeo.* at 10-16); D.96-11-048 (*mimeo.* at 4-8). Although AECA does not cite them, two more recent decisions have also applied the \$50,000 annual bill test to compensation requests. *See*, D.02-06-014 (*mimeo.* at 3-4); D.03-09-067 (*mimeo.* at 4-5).

In this case, AECA argues that more than 78% of its members have annual electricity bills of less than \$50,000. Noting that “over the past few years, AECA has pushed to expand the participation of smaller, individual family farmers” in the organization, AECA presents the following breakdown of its members’ bills:

| <b>Type/Annual Electricity Bill</b> | <b>Number of Members</b> | <b>% of Total Membership</b> |
|-------------------------------------|--------------------------|------------------------------|
| Agricultural Association            | 27                       | 2.8%                         |
| Water District                      | 67                       | 6.9%                         |

|                                    |     |         |
|------------------------------------|-----|---------|
| \$1,000,000 +                      | 20  | 2.1%    |
| \$250,000 - \$999,999              | 35  | 3.6%    |
| \$125,000 <sup>4</sup> - \$249,000 | 64  | 6.6%    |
| \$50,000 - \$149,000               | 4   | 0.4%    |
| \$25,000 - \$49,000                | 331 | 34.3%   |
| Under \$25,000                     | 409 | 42.7%   |
| <b>Total</b>                       | 957 | 100.00% |

Although AECA acknowledges that the Commission has used the percentage method described in D.96-08-040 to evaluate its previous compensation claims,<sup>5</sup> AECA argues that such an analysis is difficult here

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<sup>4</sup> This is the figure that appears in the table on 3 of AECA’s request. We presume it is a typographical error and that \$150,000 was intended.

<sup>5</sup> For example, in D.96-11-048 we described how the comparison had been done in D.95-02-093:

“In D.95-02-093, we concluded that the maximum economic interest of AECA members with bills greater than \$50,000 was \$2,369 to \$20,542, compared with \$165 in actual costs and \$605 in estimated costs if the case had been fully litigated. For members with bills less than \$50,000, we found that their economic interest in the outcome of the proceeding was relatively small (\$316 to \$1,284) in comparison to the costs of effective participation. Accordingly, we found that AECA was eligible to recover 86.05% of costs found reasonable. This percentage was derived by dividing the number of AECA members in SCE’s territory with annual bills less than \$50,000 (77) by the total number of AECA members in SCE’s service territory (86).” (*Mimeo.* at 5.)

because the principal benefit resulting from the engine conversion program will be clean air rather than dollars:

“In determining the benefit to agricultural ratepayers from this proceeding, it may appear ‘on its face’ to provide a significant rate decrease to these new customers. However, given the fact that these customers are not currently electricity customers, it is only appropriate to compare their internal costs of operating their pump on this program against their current cost of operating an internal-combustion engine. Since this program was specifically designed to provide a cost-competitive option to these growers, they will realize insignificant energy cost savings, if any, as a result of this program. In fact, as the rate increases annually at 1.5%, it becomes clear that there is not pecuniary benefit to these ratepayers.

“The benefits of this program are largely defined by the air quality benefits that will accrue to *all* ratepayers and citizens as a result of this program. In fact, in agreeing to this program, growers will be required to forego claims for emission reduction credits, thus giving up any monetary benefits available from such reductions.” (AECA Request, p. 4; emphasis in original.)

Although we do not necessarily agree with every assertion in this quotation, we agree with AECA that the monetary benefits resulting from the engine conversion program are both difficult to quantify and probably quite modest. We also note that based on the table set forth above, the estimated average cost of participation in the proceeding for the 740 AECA members with annual bills of less than \$49,000<sup>6</sup> was \$216.22 (based on the \$160,000 estimate

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<sup>6</sup> As the billing categories indicate, the table does not tell us how many AECA members, if any, have annual electricity bills between \$49,001 and \$49,999.

contained in the NOI).<sup>7</sup> In view of our past rulings comparing the costs of participation for small AECA members against the benefits they were likely to obtain, we conclude that if these 740 members had been required to bear the costs of participating in this proceeding alone, it is unlikely that a significant number of them would have participated.<sup>8</sup> Thus, we conclude that for AECA customers with annual electric bills of less than \$49,000, the financial hardship test has been satisfied in this proceeding.<sup>9</sup> Using the pro-rata discount method

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<sup>7</sup> Based upon the actual participation costs of \$115,868.68 appearing on page 8 of AECA's compensation request, the actual per-member cost of participation for the 740 members was \$156.58.

<sup>8</sup> In D.96-08-040, even though we concluded that AECA members with annual bills between \$25,000 and \$49,000 "could conceivably fund an effort at the Commission" because their average economic interest ranged from \$368 to \$1104, we nonetheless found that the average participation cost of \$102 constituted a significant financial hardship because "the Commission in the past has recognized that the smaller the economic interest, the less incentive individual members have to support participation 'at any but a modest level.'" (*Mimeo.* at 15-16.)

<sup>9</sup> In its request, AECA asks that we "clearly determine that agricultural customers with annual electricity bills of less than \$50,000 specifically qualify as 'small commercial' customers under [Pub. Util. Code §§] 1802 and 1812." (AECA Request, p. 5.)

We decline to issue such a general ruling for two reasons. First, Pub. Util. Code § 1802(h) uses a benchmark definition of the "small commercial customer" as "any nonresidential customer with a maximum peak demand of less than 50 kilowatts." Although we have discretion under the statute to depart from this definition in appropriate cases, the fact that many of the electric engines expected to be used for agricultural pumping will apparently be larger than 50 kW does not support using this case to develop a special definition of the small commercial customer in an agricultural context. (*See*, D.05-06-016, *mimeo.* at 15, 22, 28-29.) Second, as we said in D.96-08-040 when AECA protested our decision to award only 69% of its compensation request rather than the 86% we had previously awarded, "significant financial hardship must be determined for each group of

*Footnote continued on next page*

described in D.96-08-040, we thus conclude that AECA is entitled to 77.3% (740 ÷ 957) of the total compensation we find reasonable for its work in this proceeding.

## 5. Substantial Contribution

We look at several things in evaluating whether a customer has made a substantial contribution to a proceeding. First, did the administrative law judge (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 § 1802(i) explicitly recognizes, the assessment of whether the customer has 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.<sup>10</sup>

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customers in each proceeding," regardless of changes in the composition of an organization's membership. (*Mimeo.* at 16.)

<sup>10</sup> D.98-04-059, 79 CPUC2d 628, 653.

Even where the Commission does not adopt any of the customer's recommendations, compensation may still be awarded if, in the Commission's judgment, 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 issue of what contribution, if any, TURN and AECA have made to this proceeding.

### **5.1. TURN's Contribution**

As TURN points out in its compensation request, D.05-06-016 expressly describes the ways in which TURN's participation contributed to the decision. TURN provides the following comparison of its positions on various issues with how those issues were resolved in the decision:

"It is generally difficult to identify specific contributions to a settled outcome since Rule 51.9 precludes disclosure of settlement discussions. In Decision 05-06-016, however, the Commission approved the Settlement Agreement because of the reasonable balance it struck between the competing interests in the case and was therefore careful to specifically acknowledge[] how each party's concerns were addressed in the agreement. . . The following bullet points summarize how and where TURN's positions were reflected in the Settlement Agreement and final Commission decision.

#### "Line Extension Adder

- "TURN objected to flat line extension adders and argued that the adder should be tied to the actual amount of NO<sub>x</sub> emissions reduced and the average cost for NO<sub>x</sub> emission reductions. TURN proposed a cap of \$200/kW or \$40,000 per individual customer.

- "The Settlement Agreement sets maximum adders per customer based on the kilowatt rating of the electric motor connected to replace a qualifying internal combustion engine.
- "The Commission acknowledged that this item's inclusion into the settlement agreement specifically addressed TURN's comments.

#### "Total Capital Spending

- "TURN proposed a \$20 million cap on total utility capital investment for each utility to mitigate the potential for large increases in capital spending from the program.
- "The Settlement Agreement capped total capital investment at \$27.5 million for PG&E and \$9.17 million for SCE.
- "The Commission acknowledged that the settlement agreement included the cap on total spending to address TURN's concern.

#### "Competitive Advantage

- "TURN expressed concern that the utilities could use the conversion program to gain a competitive advantage over municipal utilities and irrigation districts competing for the same load. To mitigate this concern, TURN proposed that if a territory serving a customer under the incentive rates program was taken over by a municipal utility or irrigation district, utility shareholders should be required to pay half the rate of discounts received by the customer back to ratepayers.
- "The Settlement Agreement limits the number of program participants in the southern San Joaquin County to 100.
- "The Commission points to TURN consultant Jeff Nahigian's explanation of this 100 participant limit and

stated that it considered the approach to TURN's concern to be reasonable.

"Air Emissions Credits

- "TURN recommended that the Commission make a discrete finding that any emission credits generated by this program that revert back to the utility are an asset owned by the ratepayers.

- "The settlement specifically states this requirement.

- "The Commission acknowledges that this term was included to deal with TURN's concern." (TURN Compensation Request at 4-6; footnotes and citations therein omitted.)

We think this quotation accurately summarizes TURN's contributions to D.05-06-016. We also agree with TURN that "in light of the adoption of the settlement positions reflecting TURN's positions on a variety of issues," its work in these proceedings clearly made a substantial contribution to D.05-06-016. (TURN Request, p. 6.)

**5.2. AECA's Contribution**

AECA's request claims that its contributions, both before and after the filing of the PG&E and Edison applications, have been central to the engine conversion program, and thus "substantial" under § 1802(i). In its compensation request, AECA states:

"AECA spearheaded the effort to file these applications beginning in Summer 2004. AECA supplied valuable analysis and coordination with the utilities prior to the official filing of these applications on November 9, 2004. This coordination and support allowed the utilities to introduce applications which reduced the need for more extensive work later in the proceeding by all parties, as well as the Commission. This consultation and coordination also eliminated the need for

AECA to file a protest and raise additional issues for resolution through the proceeding . . .

\* \* \*

“Throughout the proceeding, the testimony and detailed economic analysis supplied by Dr. Richard McCann served as the catalyst for refining the rate proposals outlined by the utilities in their applications. Dr. McCann also supplied invaluable expertise and analyses with respect to contribution to margin analysis and the line extension proposal. The ability to reach a settlement on this issue, given the complexity of the economic issues in this case and the expedited schedule, was dependent on the spreadsheets and analysis conducted by Dr. McCann on behalf of AECA. This analysis was accepted into the record in this proceeding.” (AECA Request, pp. 5-6.)

AECA’s description of its contribution is reasonable, especially with regard to the work done by McCann. At the April 7, 2005 hearing on the settlement agreement, for instance, AECA attorney Hanschen noted that McCann and AECA Assistant Executive Director Dan Geis, rather than himself, had been principally responsible for representing AECA in the settlement negotiations. (April 7 Transcript, p. 5.) Further, all parties at the April 7 hearing appeared to agree that McCann’s analytical work had contributed significantly to the settlement negotiations. For example, when the assigned ALJ asked how the settlement’s \$26.5 million and \$9.17 limits on PG&E’s and Edison’s respective capital spending had been reached, Edison witness Garwacki replied:

“Based on some material that’s both included in Dr. McCann’s testimony and available from [CARB,] if you look at the potential participants with diesel pumps, both in PG&E’s service territory and our service territory, there’s approximately a three-to-one ratio, three times as much in PG&E’s [territory.]

“So we’ve targeted a total dollar amount [of capital spending, \$36.67 million,] and then we’ve pro rata adjusted it based on the estimated volume of pumps in each service territory.”  
(*Id.* at 36.)

As indicated by the quotation at the beginning of this subsection, AECA claims that its contribution to this proceeding should be deemed to include the work it did *before*, as well as after, the filing of the PG&E and Edison applications. (AECA Request, p. 5.) The itemization of hours that AECA has furnished shows that the amount of this pre-application work was substantial. For example, of the 188.75 hours of work performed by Geis for which AECA is seeking compensation, 37.5 of those hours, or about 20%, were invested before the applications were filed.

As we have recently stated, “there is limited precedent for the Commission to award compensation for an intervenor’s work preceding the opening of a Commission proceeding to which the work ultimately contributed.” (D.05-05-046, *mimeo.* at 7.) D.04-08-025 represents one of the rare instances in which a party has been awarded compensation for such work. In that case, the issue was whether TURN should be compensated for the work it did in analyzing PG&E’s proposed plan of reorganization prior to the commencement of Investigation (I.) 02-04-026, a proceeding that resulted in D.03-12-035.

D.03-12-035 approved the Modified Settlement Agreement (MSA) entered into between Commission staff and PG&E in connection with the latter’s 2001 filing under the U.S. Bankruptcy Code. In holding that TURN was eligible for the work it performed prior to the commencement of I.02-04-026, we emphasized the close relationship between this work, TURN’s position in the proceeding, and the result ultimately adopted by the Commission:

“TURN’s time records show that its attorneys and an outside expert worked on preparation of a public report, which TURN released on January 29, 2002, on the PG&E bankruptcy and alternatives, including use of a [dedicated rate component, or DRC]. TURN attached this report to its May 10, 2002 opening comments on the OII. The position outlined in the report, and the analysis underlying it, formed the foundation of TURN’s participation in this proceeding prior to the [proposed settlement agreement’s, or PSA’s] negotiation. TURN argues that the work it did, beginning in September 2001 and continuing until review of the PSA commenced in June 2003, should be deemed compensable because it was necessary to the formulation of TURN’s position on the DRC, which D.03-12-035 adopts. TURN argues that if it had not prepared the report before the OII issued, it would have had to do the same review and analysis to support the position it advanced after the OII issued. TURN also argues that its participation in the early part of this proceeding (prior to June 2003) was integral to its ultimate success on the DRC issue in the later part of this proceeding. (*Mimeo.* at 20.)

In finding that TURN’s work prior to June 2003 substantially contributed to D.03-12-035, we noted that “unlike [other intervenors] Aglet and Greenlining, TURN did not merely monitor the early stage of this proceeding; as an active participant at that stage, TURN advocated a position that D.03-12-035 adopts. TURN’s involvement in this proceeding from the outset enabled thorough vetting of the DRC proposal, on which TURN prevailed.” (*Id.* at 20-21.) We also emphasized the close nexus between TURN’s pre-proceeding work and the conclusions in D.03-12-035 that made compensation for the pre-proceeding work reasonable:

“Given the enormous stakes the bankruptcy case presented and the attendant time pressure, TURN’s efforts prior to the commencement of the investigation were logical. In its NOI, TURN properly informed us that it had performed analysis of

PG&E's plan of reorganization prior to our investigation being opened and that it planned to seek compensation for that work in this proceeding... The quality of TURN's pre-investigation analysis and the inseparable relationship of the analysis to its position in our proceeding and our ultimate adoption of the DRC in D.03-12-035 create the nexus of TURN's pre-investigation work with the substantial contribution requirement. We find that work TURN did prior to the issuance of the investigation substantially contributed to D.03-12-035 and should be compensated to the extent TURN's time records reflect no double counting and are reasonable otherwise." (*Id.* at 20-21.)<sup>11</sup>

TURN's work prior to the commencement of R.04-01-025, the proceeding that resulted in D.05-04-046, is another instance in which we deemed it appropriate to grant intervenor compensation for pre-proceeding work. In awarding compensation to TURN for its work prior to the rulemaking, D.05-04-046 noted that TURN's early meetings with Southern California Gas Company (SoCalGas) and the ORA had helped to flesh out the details of SoCalGas's proposal in the rulemaking, including limited pre-approval of contracts designed to take quick advantage of capacity releases, as well as a review process intended to expedite approval of other kinds of contracts.

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<sup>11</sup> However, D.04-08-025 also cautioned intervenors that they should not assume that work done prior to the commencement of a proceeding, even if clearly related to that proceeding, would automatically be compensable:

"No intervenor should presume, however, that a document prepared to support independent advocacy in advance of the issuance of a Commission proceeding, such as TURN's report, will warrant intervenor compensation. We caution intervenors that producing such a document under the assumption that it will be paid for by a substantial contribution award in a future Commission proceeding is a highly speculative—and potentially expensive--undertaking." (*Mimeo.* at 21.)

(*Mimeo.* at 7.) Like D.04-08-025, D.05-04-046 also pointed out that if TURN had not performed this work prior to issuance of the rulemaking, the work would have been necessary later:

“The pre-filing meetings and discussions shaped SoCalGas’ application and our resolution of the proceeding. Had those meetings occurred in the context of e.g., post-filing settlement conferences, TURN’s work would be compensable. Thus, we find that TURN’s participation in this proceeding prior to January 2004 substantially contributed to D.04-09-022, and that TURN’s work should be compensated.” (*Id.* at 7.)

We conclude that AECA’s work prior to the filing of the PG&E and Edison applications here satisfies the criteria in D.04-08-025 and D.05-04-046 for awarding compensation for pre-proceeding work. As AECA has pointed out in its request, its extensive consultations with PG&E and Edison “allowed the utilities to introduce applications which reduced the need for more extensive work later in the proceeding,” and also “eliminated the need for AECA to file a protest and raise additional issues,” procedural steps that would have delayed the issuance of D.05-06-016. In addition, it seems evident that if AECA had not extensively conferred with the utilities prior to the filing of their applications, such consultation would have been necessary in the context of “post-filing settlement conferences,” and the work would clearly be compensable. For all of these reasons, we conclude that AECA made a substantial contribution to D.05-06-016 and is eligible for compensation for the work it did on the engine conversion program prior to the filing of the utilities’ applications.<sup>12</sup>

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<sup>12</sup> In its compensation request, AECA argues that its work prior to the filing of the applications here should be eligible for compensation because Pub. Util. Code § 1802(a) “specifically states that intervenor compensation may be awarded for reasonable costs

*Footnote continued on next page*

## **6. Reasonableness of Requested Compensation**

Having found that both TURN and AECA made substantial contributions to D.05-06-016, we next turn to the question of whether the compensation these two organizations are seeking is reasonable. Pursuant to the amendment to its request filed on December 8, 2005, TURN is now seeking \$47,715.08 for its work in this proceeding,<sup>13</sup> while AECA is requesting a total of \$90,841.04.

Under Pub. Util. Code § 1802(a), the compensation requested must represent reasonable fees and costs for the customer's preparation for and participation in a proceeding to which the customer substantially contributed.

The issues we consider to determine reasonableness are discussed below.

### **6.1. The Effect of D.05-11-031 on the Compensation Requests of TURN and AECA**

As noted in the introduction, TURN and AECA both submitted their compensation requests on August 15, 2006. Approximately three and one-half months after the submission of these requests, the Commission issued D.05-11-031, its final decision in R.04-10-010. D.05-11-031 has an important bearing on the hourly rates that TURN and AECA can recover here, and the

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*'in preparation for and participation in a proceeding'* (emphasis added)." (AECA Request, p. 5.)

Even though we agree that AECA's pre-proceeding work is eligible for compensation here, this statutory argument is clearly without merit. When read in context, it is obvious that § 1802(a) refers to preparatory work performed after the Commission proceeding to which the work relates has been commenced, not before.

<sup>13</sup> Although TURN's December 8 amendment states that it is seeking \$47,515.08, there is a \$200 arithmetic error in the "consulting cost summary" table shown on page 9.

decision requires that AECA be awarded substantially less than the amount it has requested.

As noted in D.05-11-031, the Commission opened R.04-10-010 for the purpose of ensuring that awards of intervenor compensation are consistent with Pub. Util. Code § 1806, which provides that compensation awards “shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services,” and that any compensation awarded “may not, in any case, exceed the comparable market rate for services paid by the commission or the public utility” to such persons for such services. To carry out these directives, the Order Instituting Rulemaking (OIR) in R.04-10-010 directed the utilities to file compensation data regarding the in-house and outside representatives who appear on the utilities’ behalf before the Commission. The OIR also required intervenors to file (1) information regarding the training and experience of their own representatives, and (2) proposals which “analyze the utility data sets in relation to the qualifications of representatives who will appear on behalf of the intervenors.” (*Mimeo.* at 4.)

Based on the data submitted by the parties and the resulting analysis, D.05-11-031 determined that the reasonable compensation to pay for attorneys with 13 or more years of experience who appear at the Commission on behalf of intervenors during 2005 ranges from \$270 per hour to \$490 per hour. (*Id.* at 16.) The decision also noted that absent one of three special considerations, “we will not authorize an increase from previously authorized rates for work performed in 2005.” (*Id.*) One of the three considerations was that “where a representative’s last authorized rate was for work performed before 2004,” an increase of 3% per year, “roughly the recent rate of inflation as reported by various government agencies,” would be reasonable. (*Id.* at 17.)

**6.2. Discussion of Hours and Rates Requested by TURN**

Pursuant to the amended compensation request that it filed on December 8, 2005, TURN seeks the following compensation and expenses for the work performed by its attorneys on the instant proceeding:

| <b>TURN In-House Attorney Time</b> |                                  |             |
|------------------------------------|----------------------------------|-------------|
| Nina Suetake, 2004                 | 23.75 hrs. @ \$190/hr.           | \$ 4,512.50 |
| Nina Suetake, 2005                 | 70.25 hrs. @ \$190/hr.           | \$13,347.50 |
| Marcel Hawiger, 2004               | 9.75 hrs. @ \$270/hr.            | \$ 2,632.50 |
| Marcel Hawiger, 2005               | 28.75 hrs. @ \$320/hr.           | \$ 9,200.00 |
| Compensation Work                  | 13 hrs. @ \$95/hr. <sup>14</sup> | \$ 1,235.00 |
|                                    | <b>TOTAL</b>                     | \$30,927.50 |

| <b>TURN Direct Expenses</b> |             |
|-----------------------------|-------------|
| <u>Activity</u>             | <u>Cost</u> |
| Photocopying                | \$ 76.00    |
| Telephone                   | \$ 24.57    |
| Postage                     | \$ 7.06     |
| <b>TOTAL</b>                | \$107.63    |

TURN also requests the following compensation and expenses for the work performed by its consultant, Jeff Nahigian, of JBS Consulting (JBS):

| <b>TURN Consulting Expenses</b> |   |                    |
|---------------------------------|---|--------------------|
| Jeffrey Nahigian, 2004          | 18.50 hrs. @ \$140/hr.                  | \$ 2,590.00        |
| Jeffrey Nahigian, 2005          | 89.25 hrs. @ \$155/hr.                  | \$13,833.75        |
| JBS Direct Expenses             | Travel (parking, tolls,<br>auto & BART) | \$ 256.20          |
| <b>TOTAL</b>                    |   | <b>\$16,679.95</b> |

In its August 15, 2005 compensation request, TURN furnished a breakdown and description of the hours and expenses it is claiming for the work done by its attorneys and expert in this proceeding. Based on these records, we find the number of hours for which TURN is seeking compensation to be reasonable.

D.98-04-059 directs that before awarding compensation for an intervenor’s work in a proceeding, we should also find that the value of the work to ratepayers exceeds the amount of compensation they are being asked to pay. This requires the intervenor to “monetize” the value of its participation in the proceeding to the extent possible. (79 CPUC2d 628, 669.)

As noted above, the principal benefit to ratepayers from the settlement we approved in D.05-06-016 is likely to be cleaner air in California’s Central Valley. As PG&E and Edison pointed out in their applications, diesel engines used for agricultural pumping accounted for approximately 23% of the NO<sub>x</sub> emissions in

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<sup>14</sup> \$95 per hour represents half of Ms. Suetake’s hourly rate. Pursuant to D.98-04-059, only one-half of the attorney’s hourly rate may be charged for preparing compensation requests. (79 CPUC2d 628, 658.)

the Central Valley during the summer of 2003, and about 31% of the reactive organic gas emissions. (D.05-06-016, *mimeo.* at 4, 26.) In his March 31, 2005 letter supporting the settlement agreement, Air Pollution Control Officer Larry Green of the Sacramento Metropolitan Air Quality Management District (SMAQMD) gave the following summary of the benefits that could result from the agricultural engine conversion program:

“Replacing just 1,000 existing diesel pumps with electric pumps will result in a reduction of about 2 tons/day of NO<sub>x</sub> emissions, equal to removing over 100,000 cars and trucks from the road. Eliminating these diesel pump emissions also will prevent over 40 premature deaths by 2015 and save Californians almost \$60 million annually in lower health care costs. Using these electric pumps also reduces foreign oil dependency by eliminating the use of over 5 million gallons of diesel fuel. This also results in 40,000 fewer tons of CO<sub>2</sub> emissions into the atmosphere.”

We agree with TURN that although “it is impossible to know the total number of [agricultural] customers who will sign up for this program,” TURN’s participation also benefited ratepayers by helping to bring about a \$27.5 million cap on PG&E’s total spending for the engine conversion program. Since PG&E had originally estimated that it would spend somewhere between \$34 and \$127 million on the program, TURN is reasonable in asserting that its participation “ensured that ratepayers would be protected from such a huge increase in capital spending.” (TURN Request, p. 7.)

Having concluded that the number of hours for which TURN seeks compensation is reasonable, and that TURN’s participation should be considered productive within the meaning of D.98-04-059, we turn to the question of whether the rates TURN has requested for Hawiger’s and Nahigian’s work in 2005 should be authorized.

In its December 8, 2005 amended request, TURN asks that Hawiger's time in 2005 be compensated at \$320 per hour, a \$50 per hour increase over the \$270 rate for Hawiger's 2004 work that was authorized in D.05-06-031. TURN argues that despite the general rule in D.05-11-031 that intervenor attorneys should not receive higher hourly rates for their work in 2005 than in 2004, an exception should be made in Hawiger's case because he satisfies the second and third conditions set forth in D.05-11-031 for departing from this rule. These conditions are:

"2. Where additional experience since the last authorized rate would move a representative to a higher level of qualification (e.g., from intermediate to senior), an increase is reasonable to bring the representative's hourly rate within the range of the representative's peers at the higher level.

"3. Where a representative's last authorized rate is below that of the range of rates shown in the tables above for representatives with comparable qualifications, an increase is reasonable to bring the representative's rate to at least the bottom level of the rate range. Here, we have in mind certain representatives who have historically sought rates at or below the low end of the range of rates for their peers. We emphasize, however, that for any given level of qualifications, there will always be a range of rates in the market, so this increase is intended to narrow but not necessarily eliminate perceived disparities." (D.05-11-031, *mimeo.* at 17-18; footnote omitted.)

TURN argues that the second condition is met here because "Hawiger's rates have been set in the past at a level more consistent with the rates of senior associates. His work in recent years clearly demonstrates the type of responsibility and ability that would warrant application of a partner's rates." (TURN Amended Request, p. 4.) TURN acknowledges that while this definition of a higher level of qualification is not discussed in D.05-11-031, the Commission

should recognize that TURN's "request is consistent with the spirit of the condition." TURN also points out that as a 1993 law school graduate, Hawiger is "at the very top of the range for attorneys with comparable amounts of experience (the 8-12 year category)," and that a \$325 hourly rate was recently authorized for Christine Mailloux, another TURN staff attorney who graduated from law school in 1993. (*Id.*)

TURN also argues that in Hawiger's case, the third condition in D.05-11-031 for granting higher 2005 compensation has been satisfied. TURN notes that when Hawiger joined TURN in 1998, his hourly compensation rate was set at \$160, "the level of a first-year attorney rather than an attorney with five years experience." Although Hawiger's authorized rate has escalated steadily over the years, TURN argues that it has remained below that of equally-experienced peers, and that an increase to \$320 per hour will serve to "reasonably narrow the resulting disparity." (*Id.* at 5-6.)

We decline to authorize the requested \$50 per hour increase for Hawiger's 2005 work, which would represent an 18.5% increase over his 2004 rate. As TURN acknowledges in its amended request, Hawiger had little if any experience with utility issues when he joined TURN in 1998, even though he had graduated from law school five years earlier.<sup>15</sup> TURN also concedes that the

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<sup>15</sup> Thus, it is not appropriate to compare Hawiger's authorized 2004 rate with that of Christine Mailloux, another 1993 law school graduate employed as a TURN staff attorney. As both the TURN website and pleadings filed in our Open Access and Network Architecture Development docket (R.93-04-003/I.93-04-002) indicate, Ms. Mailloux has been working on telecommunications issues since immediately after passage of the Telecommunications Act of 1996. In other words, Ms. Mailloux has spent a longer period dealing with telecommunications issues than Mr. Hawiger has dealing with energy issues.

increases granted since then have been “generally consistent with the rates TURN requested,” even though TURN now considers those rates too low and attributable to its own “conservatism rather than any suggestion by the Commission that higher rates were not warranted for Mr. Hawiger’s work.” However, the fact remains that over the years, TURN has generally gotten what it asked for in terms of Hawiger’s compensation. The third condition in D.05-11-031 states that “for any given level of qualifications, there will always be a range of rates in the market,” and that the purpose of the condition is to “narrow but not necessarily eliminate perceived disparities.” Even though Hawiger’s \$270 rate is at the low end of the range for attorneys with his level of experience, it is still within that range, and thus reasonable.

Even though we decline to authorize the \$50 per hour increase in Hawiger’s rate that TURN has requested, we will authorize the \$15 per hour increase that TURN is seeking for Jeffrey Nahigian’s work during 2005. In two recent decisions, we approved TURN’s request that Nahigian’s work in 2005 be compensated at \$155 per hour. (*See*, D.06-04-012, *mimeo.* at 14-15; D.06-04-029, *mimeo.* at 9.) For the reasons stated in those decisions, the same increase is appropriate here.

### **6.3. Discussion of Hours and Rates Requested by AECA**

In its August 15, 2005 compensation request, AECA asks for the following compensation for work by its attorney, Peter Hanschen. AECA agrees that the compensation should be discounted by the factor discussed in Section 4 of this decision:

| <b>AECA Outside Attorney Time</b> |                        |                     |
|-----------------------------------|------------------------|---------------------|
| Peter Hanschen, 2004              | 47.25 hrs. @ \$575/hr. | \$27,168.75         |
| Peter Hanschen, 2005              | 52.25 hrs. @ \$595/hr. | \$31,088.75         |
|                                   | Subtotal               | \$58,257.50         |
|                                   | Discount Factor        | 77.3% <sup>16</sup> |
|                                   | <b>TOTAL</b>           | <b>\$45,033.05</b>  |

AECA has also requested the following compensation for the work performed by its outside consultants (Richard McCann, Steven Moss and Eric Cutter of M-Cubed) and in- house staff (Michael Boccadoro and Dan Geis):

| <b>AECA Consultant and In-house Staff Time</b> |                         |                    |
|--|-------------------------|--------------------|
| Richard McCann, 2004                           | 10.5 hrs. @ \$160/hr.   | \$ 1,680.00        |
| Richard McCann, 2005                           | 111.25 hrs. @ \$175/hr. | \$19,468.75        |
| Steven Moss                                    | 36.0 hrs. @ \$175/hr.   | \$ 6,300.00        |
| Eric Cutter                                    | 4.0 hrs. @ \$110/hr.    | \$ 440.00          |
| Michael Boccadoro                              | 20.25 hrs. @ \$150/hr.  | \$ 3,037.50        |
| Dan Geis                                       | 188.75 hrs. @ \$125/hr. | \$23,593.75        |
|  | Subtotal                | \$54,520.00        |
|  | Discount Factor         | 77.3%              |
|  | <b>TOTAL</b>            | <b>\$42,143.96</b> |

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<sup>16</sup> As discussed in Section 4, AECA erroneously computed the discount factor at 78.4%. The correct figure (740÷957) is 77.3%.

Finally, AECA seeks reimbursement for the following direct expenses:

| <b>AECA Expenses</b>         |                   |
|------------------------------|-------------------|
| Travel (Gas & tolls)         | \$ 601.30         |
| Photocopies                  | \$ 158.50         |
| Postage                      | \$ 118.40         |
| Messengers                   | \$ 61.48          |
| Morrison & Foerster expenses | \$2,151.50        |
| Subtotal                     | \$3,091.18        |
| Discount Factor              | 77.3%             |
| <b>TOTAL</b>                 | <b>\$2,389.48</b> |

As in TURN’s case, we find as preliminary matters that (1) based on the description and breakdown of hours and expenses that AECA submitted, its attorney and consultants invested a reasonable number of hours in this case, and (2) AECA’s work should be considered productive within the meaning of D.98-04-059.

With respect to the time invested after the filing of the utilities’ applications, AECA is seeking compensation mainly for time spent on motions, attending PHCs, preparing opening testimony, or participating in settlement negotiations. The hours claimed for these activities appear reasonable.

As noted previously, AECA is also seeking compensation for the significant number of hours it spent working with PG&E and Edison on the engine conversion program *before* the filing of the utilities’ applications. As stated in Section 5.2 of this decision, we agree that much of this work would have

been necessary even if the utilities had filed their applications first. Moreover, we agree that AECA's decision to work with the utilities prior to the filing of the applications contributed to a more expeditious outcome in this proceeding.

With respect to the cost-benefit analysis required by D.98-04-059 to determine productivity, we again conclude that the main benefit to ratepayers from AECA's work in this case is likely to be cleaner air in the Sacramento and San Joaquin Valleys. As stated above and in D.05-06-016, while these benefits are difficult to quantify, we have little doubt that they will be significant. The support for the March 30, 2005 settlement agreement expressed by CARB, SMAQMD and the San Joaquin Valley Air Pollution Control District are all evidence of this. Further, it was the probable air quality benefits that persuaded ORA to support the settlement agreement, even though ORA had concluded that the engine conversion program was unlikely to make a positive contribution to margin over the program's 10-year life. (D.05-06-016, *mimeo.* at 27 and footnote 13.)<sup>17</sup>

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<sup>17</sup> As is evident from the discussion in D.05-06-016, AECA's and TURN's work in this proceeding cannot be considered duplicative, because even though both of these parties supported the March 30, 2005 joint settlement agreement, they were meaningful adversaries before the settlement was reached.

TURN not only filed a multi-faceted protest of the utilities' applications, but also resisted AECA's efforts at the January 14 and February 4, 2005 PHCs to obtain a decision on the engine conversion program prior to the Fall of 2005. At the February 4 PHC, the parties also sparred over whether TURN had been afforded enough discovery to be able to specify its differences with AECA and the applicants over the engine conversion program. (D.05-06-016, *mimeo.* at 9-13.) The TURN and AECA direct testimony also differed sharply over the cost-effectiveness of the proposed adders to the utilities' normal line extension allowances. (*Id.* at 10-11, 15-16.)

*Footnote continued on next page*

Although we agree with AECA that the number of hours it invested in this proceeding was reasonable and that these hours were productive under the test set forth in D.98-04-059, some discussion is necessary of the \$575 and \$595 hourly rates that AECA is seeking for Hanschen's work.

AECA does not cite any Commission decisions awarding rates of this magnitude for an attorney's work, which are higher than any hourly rates we have ever approved under the intervenor compensation program. Moreover, as discussed above, AECA's request is contrary to the guidelines set forth in D.05-11-031, which specify that the reasonable rates for attorneys with Hanschen's level of experience (13 or more years) range from \$270 per hour to \$490 per hour. (*Mimeo.* at 16.) As explained below, under the criteria set forth in D.05-11-031, we determine that AECA should receive \$340 per hour for Hanschen's work on these applications in 2004, and \$350 per hour for his work in 2005.

As noted above, D.05-11-031 specifies that in the absence of one of three special considerations, the Commission "will not authorize an increase from previously authorized rates for work performed in 2005." (*Id.*) The first of these three considerations is that "where a representative's last authorized rate was for work performed before 2004," an increase of 3% per year, "roughly the recent rate of inflation as reported by various government agencies," will be considered reasonable. (*Id.* at 17.)

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As stated in D.05-06-016, we decided to approve the March 30, 2005 joint settlement agreement "because of the reasonable balance it strikes between the competing interests in this case." (*Id.* at 25.) There can be no doubt that the work of both TURN and AECA contributed to clarifying and then resolving these competing interests.

That consideration is relevant here because the last time the Commission awarded intervenor compensation for work performed by Hanschen was in D.00-09-068. In that decision, the Commission determined that AECA should receive \$300 per hour for the work Hanschen performed during 1998, 1999 and 2000 in connection with PG&E's 1999 Test Year general rate case. (*Mimeo.* at 18-19.) Applying the 3% escalation factor to this rate for the years since 2000 yields compensation rates for Mr. Hanschen's work in 2004 of \$337.65, and \$347.78 for his work in 2005. For ease of computation, we will round these figures to \$340 for 2004 and \$350 for 2005. Applying these rates to the hours billed by Hanschen (47.25 in 2004 and 52.25 in 2005) results in an award -- before application of the 77.3% discount factor -- of \$34,352.50.

The hourly rates AECA has requested for work performed by Richard McCann and Steven Moss of the M-Cubed consulting firm require less discussion. AECA requests \$160 per hour for McCann's work in 2004, \$175 per hour for his work in 2005, and \$175 per hour for Moss's work, all of which was performed in 2005. In D.03-09-067, we approved an hourly rate of \$175 for both McCann and Moss. (*Mimeo.* at 7-8.) Thus, we approve the rates requested for the work by these gentlemen in this proceeding.

AECA has also requested an hourly rate of \$110 for the work performed by Eric Cutter of M-Cubed. The Commission has not previously set an intervenor compensation rate for Cutter, who "specializes in making complex analyses transparent to diverse stakeholders," according to AECA. The AECA request notes that Cutter holds both a Master of Business Administration degree and a Master of Science degree from U.C. Berkeley (the latter being in Energy and Water Resources). Prior to joining M-Cubed, Cutter was a Senior Resource

Analyst for PG&E. In view of this showing of experience, we will approve an hourly rate of \$110 for Cutter's work.<sup>18</sup>

AECA has also requested an hourly rate of \$150 for the work performed by its Executive Director, Michael Boccadoro. The last time we set a rate for Boccadoro's work was in D.00-09-068, where we approved an hourly rate of \$125 for the work he performed during 1998 in connection with PG&E's 1999 Test Year general rate case. Applying the 3% escalation factor provided for in D.05-11-031 yields rates of \$149.26 for Boccadoro's work in 2004, and \$153.73 for his work in 2005. For ease of computation, we will approve an hourly rate of \$150 for Boccadoro's work on these applications in both 2004 and 2005.

AECA has also requested a rate \$125 per hour for the work of its Assistant Executive Director (and former Director of Public Affairs), Dan Geis. We have not previously determined an hourly rate for Geis. In support of its request, AECA states that Geis (1) graduated from California Polytechnic State University, San Luis Obispo, with a double major in Agribusiness and Political Science, (2) advocates regarding energy issues on behalf of the agricultural industry at the California Legislature, and (3) serves as AECA's coordinator for all Commission proceedings. (AECA Request, p. 11.) In view of this showing of experience, we will approve the requested rate of \$125 per hour for Geis's work here.<sup>19</sup>

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<sup>18</sup> We also note that under D.05-11-031, \$110 per hour is the low end of the range for experts who appear on behalf of intervenors. (*Mimeo.* at 17.)

<sup>19</sup> Appendix B to AECA's request shows that of the 188.75 hours of Geis's time for which AECA seeks compensation, 10.5 hours were spent researching and drafting the compensation request. In addition, the time entries for Geis's work indicate that AECA is seeking compensation for 10 trips he made from Sacramento to San Francisco. Under

*Footnote continued on next page*

#### **6.4. Discussion of Related Expenses**

The itemized expenses submitted by TURN for its attorneys and consultant total \$363.83. We find these expenses to be commensurate with the work performed and reasonable.

AECA submitted a claim for direct expenses of \$3091.18 (before application of the 77.3% discount factor). Apart from the photocopying charges by Hanschen's law firm, Morrison & Foerster, all of these expense items appear reasonable.

We single out the photocopying charges for special discussion because they represent \$1,871.94 out of the \$3091.18 total. AECA has not provided any detail on this item, but it appears the figure is high because in November 2004 -- before the formal service list for this proceeding was established -- Hanschen served three pleadings in this case totaling 15 pages (a petition to intervene, a motion for expedited consideration and a response to the joint PG&E-Edison motion to consolidate the applications) on the service lists for both A.02-05-004 and A.04-06-024. The former proceeding was Edison's 2003 general rate case, and the latter was Phase 2 of a PG&E general rate case. Both of these proceedings had very large service lists (with about 105 and 80 names, respectively), so serving all the people on them entailed making a large number of copies.

Even if we assume that 250 copies of the three pleadings were necessary, this would represent a charge of nearly 50 cents per page. Although we will

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D.98-04-059, travel time and time spent preparing compensation requests are ordinarily compensated at half the advocate's usual rate. (79 CPUC2d at 658.) Accordingly, 148.25 of Geis's hours will be compensated at \$125 per hour, and 40.5 hours at \$62.50 per hour.

allow this expense item in this instance, we caution AECA and other parties that in the future, they will be expected to provide a more thorough justification for such large photocopying bills.

**7. Awards**

As set forth in the tables below, we award TURN a total of \$ 46,277.58 for its contribution to D.05-06-016.

| <b>Attorney</b> | <b>Year</b> | <b>Rate</b> | <b>Hours</b> | <b>Total</b> |
|-----------------|-------------|-------------|--------------|--------------|
| Suetake         | 2004-05     | \$ 190.00   | 94.0         | \$ 17,860.00 |
| Hawiger         | 2004-05     | \$ 270.00   | 38.5         | \$ 10,395.00 |
| Subtotal        |             |             |              | \$ 28,255.00 |

| <b>Attorney Compensation Request Time</b> |      |          |      |             |
|---|------|----------|------|-------------|
| Suetake                                   | 2005 | \$ 95.00 | 13.0 | \$ 1,235.00 |
| Direct Expenses                           |      |          |      | \$ 107.63   |
| Attorney Time Subtotal                    |      |          |      | \$29,597.63 |

| <b>Expert</b>       | <b>Year</b> | <b>Rate</b> | <b>Hours</b> | <b>Total</b> |
|---------------------|-------------|-------------|--------------|--------------|
| Nahigian            | 2004        | \$ 140.00   | 18.50        | \$ 2,590.00  |
| Nahigian            | 2005        | \$ 155.00   | 89.25        | \$13,833.75  |
| JBS Direct Expense  |             |             |              | \$ 256.20    |
| JBS/Expert Subtotal |             |             |              | \$16,679.95  |

**TOTAL AWARDED TO TURN      \$ 46,277.58**

As shown in the tables below, we also award AECA a total of \$69,131.27 for its contribution to D.05-06-016:

| <b>Attorney</b> | <b>Year</b> | <b>Rate</b> | <b>Hours</b> | <b>Total</b> |
|-----------------|-------------|-------------|--------------|--------------|
| Hanschen        | 2004        | \$ 340.00   | 47.25        | \$16,065.00  |
| Hanschen        | 2005        | \$ 350.00   | 52.25        | \$18,287.50  |
|                 |             |             | Subtotal     | \$34,352.50  |

| <b>Expert/Staff</b> | <b>Year</b> | <b>Rate</b> | <b>Hours</b>    | <b>Total</b> |
|---------------------|-------------|-------------|-----------------|--------------|
| McCann              | 2004        | \$ 160.00   | 10.50           | \$ 1,680.00  |
| McCann              | 2005        | \$ 175.00   | 111.25          | \$19,468.75  |
| Moss                | 2005        | \$ 175.00   | 36.00           | \$ 6,300.00  |
| Cutter              | 2004        | \$ 110.00   | 4.00            | \$ 440.00    |
| Boccardo            | 2004-05     | \$ 150.00   | 20.25           | \$ 3,037.50  |
| Geis                | 2004-05     | \$ 125.00   | 148.25          | \$18,531.25  |
|                     |             |             | Direct Expenses | \$ 3,091.18  |
|                     |             |             | Subtotal        | \$52,548.68  |

| <b>Staff Travel/Compensation Request Time</b> |         |          |       |             |
|---|---------|----------|-------|-------------|
| Geis  | 2004-05 | \$ 62.50 | 40.50 | \$ 2,531.25 |

AECA Subtotal \$ 89,432.43  
 Discount Factor (77.3%)

**TOTAL AWARDED TO AECA      \$ 69,131.27**

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 30, 2005, the 75th day after August 15, 2005, the submission date of both compensation requests and continuing until full payment of the award is made.

Since the engine conversion program applies only to PG&E and Edison, and since all the parties agree that the population of diesel engines in PG&E's service territory that are eligible for conversion is about three times as large as the population in Edison's territory, we will direct PG&E to pay 75% of each compensation award set forth above, and Edison to pay 25%.

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. The records of TURN and AECA 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.

#### **8. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided in Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the Draft Decision (DD) posted on the Commission's website on April 17, 2006 waived the otherwise-applicable 30-day comment period.

Notwithstanding this waiver, AECA submitted comments on the DD on April 21, 2006. While we do not ordinarily accept comments on intervenor

compensation DDs, as to which comments have been waived, we will make a limited exception in this case to address the single issue that AECA has raised.

In its comments, AECA states that it “supports the findings of the [DD],” but also contends that the hourly rates awarded for attorney Peter Hanschen’s work are too low. In particular, AECA argues that (1) Hanschen and Michael Florio, TURN’s Senior Attorney, “are of commensurate experience, and are among the most respected attorneys to practice before the Commission,” (2) the work that Florio and Hanschen performed between 1998 and 2000 (the starting point for computing Hanschen’s hourly rate here) was compensated at essentially equal rates, (3) the intervenor compensation awards for Florio’s work have steadily increased so that his work in 2004 was compensated at \$435 per hour and his work in 2005 at \$470 per hour, and (4) in view of their similar experience and skill, Hanschen should be awarded the same rates as Florio for Hanschen’s work in this case in 2004 and 2005.

While it is true that the factors cited by AECA might ordinarily justify awarding Hanschen and Florio equivalent rates, AECA’s argument overlooks key aspects of D.05-11-031. First, despite AECA’s suggestion to the contrary, D.05-11-031 clearly states that the guidelines set forth therein are to be used for setting intervenor compensation rates for work performed in 2005. (*See, mimeo.* at 16-17, 29.) Even though determining intervenor compensation rates may be, as AECA says, an “evolving process” and D.05-11-031 may not “necessarily [be] a template for future hourly rate updating,” the rules set forth in that decision are not merely advisory. Indeed, AECA itself concedes that the DD “properly applied the guidelines set forth in D.05-11-031.” (AECA Comments, p. 4.)

Second, AECA’s argument ignores the specific language in D.05-11-031 which recognizes that for each particular advocate category, differences in rates

among comparably-qualified advocates are not unreasonable and are likely to persist. For example, in discussing the third factor that could justify awarding a higher rate in 2005 than in 2004, D.05-11-031 states:

*“Where a representative’s last authorized rate is below that of the range of rates shown in the tables above for representatives with comparable qualifications, an increase is reasonable to bring the representative’s rate at least to the bottom level of the rate range. Here, we have in mind certain representatives who have historically sought rates at or below the low end of the range of rates for their peers. We emphasize, however, that for any given level of qualifications, there will always be a range of rates in the market, so this increase is intended to narrow but not necessarily to eliminate perceived disparities.” (Mimeo. at 17-18; footnote omitted; emphasis added.)*

In this case, while it is true that the DD awards rates for Hanschen’s work in 2004 and 2005 that are only about 70% of the rates approved for Florio’s work in other matters during the same period, the fact remains that Hanschen’s approved rates -- \$340 for 2004, and \$350 for 2005 – are well above the bottom of the range of rates for attorneys with Hanschen’s level of experience. Thus, while lower than Florio’s, they cannot be considered inequitable under D.05-11-031, and we will not increase them.

## **9. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner, and A. Kirk McKenzie is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. TURN has met all of the procedural requirements necessary to claim compensation in this proceeding.
2. AECA sent its compensation request by electronic mail and First Class United States Mail to the Commission on August 15, 2005, the final filing date

allowed by our rules, but the request was not received in the Commission's Docket Office until several days thereafter.

3. On August 24, 2005, AECA filed a motion asking that its compensation request be accepted for late filing.

4. D.05-06-016 concluded that AECA had met all of the eligibility requirements for seeking intervenor compensation except a showing of financial hardship.

5. In D.95-02-093, D.96-02-011, D.96-08-040 and D.96-11-048, the Commission concluded that for AECA customers with annual electric bills of less than \$50,000, the estimated costs of participating in the related proceedings outweighed the savings that such customers were likely to realize from participation, and that this situation satisfied the definition of financial hardship set forth in Pub. Util. Code § 1802(g).

6. The Commission has also applied the \$50,000 annual electricity bill test to determine financial hardship in D.02-06-014 and D.03-09-067.

7. The monetary benefits from participating in these proceedings that would accrue to AECA members with annual electric bills of less than \$50,000 are difficult to quantify but clearly modest.

8. In view of the fact that participation in this proceeding would have cost about \$216 for each AECA member with an electric bill of less than \$49,000, it is likely that few, if any, such members would have participated due to the modest benefits they would receive.

9. For AECA members with annual electric bills of \$49,000 or less, participation in this proceeding would have constituted a significant financial hardship within the meaning of Pub. Util. Code § 1802(g).

10. 740 of AECA's 957 members, or 77.3%, have annual electric bills of \$49,000 or less.

11. Prior to execution of the March 30, 2005 joint settlement agreement approved in D.05-06-016, TURN and AECA were adversaries in the underlying proceedings.

12. As discussed herein, AECA made a substantial contribution to D.05-06-016.

13. As discussed herein, TURN also made a substantial contribution to D.05-06-016.

14. Both TURN and AECA have 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 and the guidelines set forth in D.05-11-031.

15. The total amount of reasonable compensation for TURN is \$46,277.58.

16. The total amount of reasonable compensation for AECA is \$69,131.27.

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

### **Conclusions of Law**

1. AECA's August 24, 2005 motion asking that its request for compensation be accepted for late filing should be granted.

2. AECA 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 a substantial contribution to D.05-06-016.

3. AECA should be awarded \$69,131.27, or 77.3% of its adjusted request, for its substantial contribution to D.05-06-016.

4. TURN has also fulfilled the requirements of Pub. Util. Code §§ 1801-1812 and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making a substantial contribution to D.05-06-016.

5. TURN should be awarded \$46,277.58 for its substantial contribution to D.05-06-016.

6. In accordance with Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

7. This order should be effective today so that TURN and AECA may be compensated without further delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The August 24, 2005 motion of the Agricultural Energy Consumers Association (AECA) for late filing of its compensation request dated August 15, 2005 is granted.

2. AECA is awarded \$69,131.27 as compensation for its substantial contribution to Decision (D.) 05-06-016.

3. The Utility Reform Network (TURN) is awarded \$46,277.58 as compensation for its substantial contribution to D.05-06-016.

4. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay 75%, and Southern California Edison Company shall pay 25%, of the amounts awarded herein. Payment of these awards shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 30, 2005, the 75<sup>th</sup> day after the submission date of the TURN and AECA requests for compensation, and continuing until full payment is made.

5. In view of the significance of the issue raised, a limited exception should be made to the rule against accepting comments on draft decisions as to which comments have been waived, and AECA's April 21, 2006 comments on the draft decision herein shall be accepted for filing.

6. Applications (A.) 04-11-007 and A.04-11-008 are closed.

This order is effective today.

Dated April 27, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

## APPENDIX

## Compensation Decision Summary Information

|                                  |  |                             |
|----------------------------------|--|-----------------------------|
| <b>Compensation Decision:</b>    | D0604065   | <b>Modifies Decision?</b> N |
| <b>Contribution Decision(s):</b> | D0506016   |                             |
| <b>Proceeding(s):</b>            | A0411007/ A0411008   |                             |
| <b>Author:</b>                   | ALJ McKenzie   |                             |
| <b>Payer(s):</b>                 | Pacific Gas and Electric Company, Southern California Edison Company |                             |

## Intervenor Information

| <b>Intervenor</b>                         | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Multiplier?</b> | <b>Reason Change/Disallowance</b>  |
|---|-------------------|-------------------------|-----------------------|--------------------|--|
| Agricultural Energy Consumers Association | 8/15/05           | \$90,841.04             | \$69,131.27           | No                 | Failure to justify hourly rates; failure to discount travel and intervenor compensation preparation time; arithmetic error |
| The Utility Reform Network                | 8/15/05           | \$47,515.08             | \$46,277.58           | No                 | Failure to justify hourly rates; arithmetic error  |

## Advocate Information

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b>   | <b>Intervenor</b>                         | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|---------------|---|-----------------------------|----------------------------------|---------------------------|
| Peter             | Hanschen         | Attorney      | Agricultural Energy Consumers Association | \$575                       | 2004                             | \$340                     |
| Peter             | Hanschen         | Attorney      | Agricultural Energy Consumers Association | \$595                       | 2005                             | \$350                     |
| Richard           | McCann           | Policy Expert | Agricultural Energy Consumers Association | \$160                       | 2004                             | \$160                     |
| Richard           | McCann           | Policy Expert | Agricultural Energy Consumers Association | \$175                       | 2005                             | \$175                     |
| Steven            | Moss             | Policy Expert | Agricultural Energy Consumers Association | \$175                       | 2005                             | \$175                     |
| Eric              | Cutter           | Policy Expert | Agricultural Energy Consumers Association | \$110                       | 2004                             | \$110                     |

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b>   | <b>Intervenor</b>                         | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|---------------|---|-----------------------------|----------------------------------|---------------------------|
| Michael           | Boccardo         | Policy Expert | Agricultural Energy Consumers Association | \$150                       | 2004                             | \$150                     |
| Michael           | Boccardo         | Policy Expert | Agricultural Energy Consumers Association | \$150                       | 2005                             | \$150                     |
| Dan               | Geis             | Policy Expert | Agricultural Energy Consumers Association | \$125                       | 2004                             | \$125                     |
| Dan               | Geis             | Policy Expert | Agricultural Energy Consumers Association | \$125                       | 2005                             | \$125                     |
| Nina              | Suetake          | Attorney      | The Utility Reform Network                | \$190                       | 2004                             | \$190                     |
| Nina              | Suetake          | Attorney      | The Utility Reform Network                | \$190                       | 2005                             | \$190                     |
| Marcel            | Hawiger          | Attorney      | The Utility Reform Network                | \$270                       | 2004                             | \$270                     |
| Marcel            | Hawiger          | Attorney      | The Utility Reform Network                | \$320                       | 2005                             | \$270                     |
| Jeffrey           | Nahigian         | Policy Expert | The Utility Reform Network                | \$140                       | 2004                             | \$140                     |
| Jeffrey           | Nahigian         | Policy Expert | The Utility Reform Network                | \$155                       | 2005                             | \$155                     |

(END OF APPENDIX)