

Decision 07-04-031 April 12, 2007

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

In the Matter of the Application of San Diego Gas & Electric Company (U 902 G) and Southern California Gas Company (U 904 G) for Authority to Integrate Their Gas Transmission Rates, Establish Firm Access Rights, and Provide Off-System Gas Transportation Services.

Application 04-12-004  
(Filed December 2, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS  
TO DECISIONS 06-04-033 AND 06-12-031**

**1. Summary**

This decision awards The Utility Reform Network (TURN) \$87,958.29 in compensation for its substantial contributions to Decision (D.) 06-04-033 and D.06-12-031. This proceeding remains open to consider the two petitions for modification of D.06-12-031 and the application for rehearing of D.06-12-031.

**2. Background**

This proceeding was bifurcated into two phases. Phase one addressed the proposal of San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) to integrate the transmission-related costs of their gas transmission systems so that the customers of each utility share in the transmission costs of both gas transmission systems. We approved this proposal in D.06-04-033, which we refer to as the system integration decision. The system integration decision allows customers of both SoCalGas and SDG&E to access

natural gas supplies that flow into any existing or new receipt points anywhere on the two systems at the same transmission rate.

Phase two of this proceeding addressed the utilities' proposals to establish a system of firm access rights on the gas transmission systems of SoCalGas and SDG&E and off-system gas delivery. Phase two also addressed whether SoCalGas' peaking rate tariff should be retained. The phase two issues were addressed in D.06-12-031.

Three days of evidentiary hearings were held in September 2005 for phase one, and twelve days of evidentiary hearings were held in August 2006 for phase two.

### **3. Requirements for Award of Compensation**

The intervenor compensation program, enacted in Public Utilities 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. Section 1807 provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), 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.

#### **4. Procedural Issues**

The initial prehearing conference in this proceeding was held on April 28, 2005. TURN timely filed its NOI on May 26, 2005. In its NOI, TURN asserted financial hardship based upon the rebuttable presumption of eligibility pursuant to §1804(b)(1). No one challenged the presumption.

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 its articles of incorporation or bylaws to represent the interests of residential or small business customers.

On June 23, 2005, Administrative Law Judge (ALJ) John S. Wong ruled that TURN is a customer pursuant to § 1802(b)(1)(C). The ruling further determined

that TURN met the financial hardship condition through the rebuttable presumption of eligibility, as provided for in §1804(b)(1), because TURN met the financial hardship requirement in another proceeding within one year of the commencement of this proceeding. (See ALJ Ruling dated July 27, 2004, in Rulemaking 04-04-003.) The June 23, 2005 ruling also found that TURN was eligible to file a claim for an award of compensation.

TURN filed its request for compensation on February 13, 2007, within 60 days of D.06-12-031 being issued. In view of the above, we affirm the ALJ's ruling and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

## **5. 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 §§1801.3(f) 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 contributed. It is

then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>1</sup>

Should the Commission 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 contends that its participation in this proceeding made a variety of substantial contributions to both D.06-04-033 and D.06-12-031. In phase one, TURN recommended that rolled-in ratemaking treatment not be allowed for the cost of expanding the receipt point capacity at Otay Mesa. TURN was also able to obtain the agreement of potential Otay Mesa shippers in the phase one Joint Recommendation, and in the phase two Joint Proposal, that the first 700 million cubic feet per day of takeaway capacity at Otay Mesa would be funded on an incremental basis rather than being rolled into rates. The Joint Recommendation and the Joint Proposal provided that in return for the shippers funding the incremental cost of expansion, these shippers would receive a scheduling right for the new capacity. TURN contends that although D.06-04-033 did not adopt the Joint Recommendation in phase one, most of the essential features of the Joint Proposal, as a result of TURN's earlier efforts in phase one as well as in phase two, were incorporated into the system of firm access rights adopted in the

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<sup>1</sup> D.98-04-059, 79 CPUC2d 628 at 653.

phase two decision, D.06-12-031. TURN also contends that D.06-04-033 agreed with TURN's position that system integration should be implemented by advice letter, and that the implementation take effect when the liquefied natural gas (LNG) actually begins to flow through the new Otay Mesa receipt point.

We acknowledged in D.06-04-033 that the Joint Recommendation "provides that the party who expands capacity on an incremental basis should have a priority in scheduling," and that the "recommendation makes sense from the point of view that one who makes the investment should receive something in return." (D.06-04-033, p. 48.) However, we did not adopt the Joint Recommendation in phase one for the following reasons:

Although the recommendations [in the Joint Recommendation] may have merit, the parties to this proceeding were not informed of the Joint Recommendation until the opening briefs were filed after the close of hearings in the system integration phase. The parties were not provided with notice or an opportunity to be heard regarding the Joint Recommendation. In addition, several of the recommendations resolve firm access rights issues, which are supposed to be resolved in the firm access rights phase of this proceeding. Due to these procedural problems, we decline to adopt the Joint Recommendation. (D.06-04-033, pp. 62-63.)

The groundwork in the Joint Recommendation that TURN undertook in phase one, provided the foundation for the Joint Proposal in phase two. In D.06-12-031, we adopted several features of the Joint Proposal, including the funding of new receipt point capacity or expansion of existing receipt point capacity on an incremental cost basis, and providing the funding shipper with the right to use that capacity. We stated in D.06-12-031 that:

The adoption of these key features from the Joint Proposal, and their incorporation into the FAR system will provide certainty to potential gas suppliers that their gas supplies will be able to access the

southern California gas market. At the same time, the adopted features provide a set-aside capacity incentive for those parties who are willing to fund the cost of new or expanded capacity on an incremental cost basis, and assurance to ratepayers that the cost of this capacity will not be recovered in their rates. (D.06-12-031, pp. 75-76.)

As part of the Joint Recommendation, TURN and the other parties, agreed that the “adopted cost allocation and rate design methodology for integrated transmission rates shall be placed into effect when Baja LNG supplies begin to flow through the Otay Mesa receipt point.” (D.06-04-033, p. 8.) In adopting the system integration proposal, we ordered that the “integrated transmission rates shall go into effect on the first day of the month in which regasified LNG is expected to flow through Otay Mesa.” (D.06-04-033, pp. 64, 71.)

The Commission has awarded full compensation even where the intervenor’s positions were not adopted in full, especially in proceedings with a broad scope. (See D.98-04-028, 79 CPUC2d 570, 573-574.) In the phase one decision, although we did not adopt the Joint Recommendation, we agreed with TURN that the integrated transmission rates should go into effect when the LNG begins to flow through Otay Mesa. In addition, because many of the issues in the Joint Recommendation were to be addressed in phase two rather than phase one, and because the Joint Recommendation in phase one formed the basis for the Joint Proposal in phase two, it is appropriate to award compensation in D.06-04-033 for TURN’s work on the Joint Recommendation, which resulted in the adoption of several of the elements of the Joint Proposal in D.06-12-031.

In addition to TURN’s efforts regarding the Joint Proposal in phase two, TURN also advocated for the retention of SoCalGas’ peaking rate, opposed the utilities’ proposal to retain 25% of the interruptible off-system delivery revenues,

and advocated to reduce the cost of implementing the citygate pooling service. We adopted TURN's views in D.06-12-031 on the peaking rate, the reduction in the costs of the citygate pooling service, and went a step further than TURN had recommended on how much of the interruptible off-system delivery revenues should be retained by SoCalGas' shareholders.

### **5.1. Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates that of similar interests otherwise adequately represented by another party, or unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if their participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the commission order.

TURN notes in its request for compensation that the Division of Ratepayer Advocates (DRA) and TURN were the only parties representing small consumer interests. However, TURN and DRA generally advocated different positions on the issues in phase one and phase two. As a result, TURN asserts that its work was unique and did not duplicate the participation of DRA or of any other parties.

TURN also acknowledges that it actively cooperated with a number of other parties in both phases, which resulted in a substantial reduction in the number of hours devoted to this proceeding. In phase two, TURN, SDG&E and SoCalGas presented joint testimony on the peaking rate issue and on the Joint Proposal.

Based on the differences between the positions of DRA and TURN in both phases of this proceeding, and TURN's cooperation with other parties in

sponsoring joint testimony on various issues, we find that TURN did not duplicate the efforts of DRA or of other parties in this proceeding.

Based on TURN's activities in this proceeding, as reflected in D.06-04-033 and D.06-12-031 as discussed above, we conclude that TURN made a substantial contribution to both decisions.

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

TURN requests \$87,958.29 for its participation in this proceeding, as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Attorney Services	\$87,751.25
Direct Expenses	\$207.04
Total Expenses Claimed	\$87,958.29

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 discussed below:

### **6.1. 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.

As set forth in Appendix A of TURN's request for compensation, TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

## 6.2. 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.

With the exception of the requested rates for 2006 for its attorney Hayley Goodson, and 2007 for its attorneys Michael Florio and Marcel Hawiger, the hourly rates that TURN requests for its attorneys were previously approved by the Commission in the decisions as set forth in the following table:

Name	2004 Rate	2005 Rate	2006 Rate
Michel P. Florio	\$470 - D.05-01-029	\$470 - D.05-11-031	\$485 - D.06-11-031
Marcel Hawiger	\$270 - D.05-04-031	\$270 - D.06-04-029	\$280 - D.06-10-018
Hayley Goodson	\$190 - D.05-01-007	\$190 - D.05-01-007	n/a

For Goodson's 2006 rate, TURN requests an hour rate of \$195. This rate represents a 3% increase over the authorized 2004-2005 rate of \$190, rounded to the nearest \$5 increment.

For Florio's 2007 rate, TURN requests an hourly rate of \$500. This rate represents a 3% increase over the authorized 2006 rate for Florio, rounded to the nearest \$5 increment.

For Hawiger's 2007 rate, TURN requests an hourly rate of \$290. This rate represents a 3% increase over the authorized 2006 rate for Hawiger, rounded to the nearest \$5 increment.

D.07-01-009 adopted, among other things, a 3% cost-of-living adjustment (COLA) for work performed in calendar year 2006, and a 3% COLA for work performed in 2007. Consistent with D.07-01-009, TURN's request for a 3% increase to Goodson's 2004-2005 rate, and a 3% increase to the 2006 rates of Florio and Hawiger are justified. We adopt an hourly rate of \$195 for Goodson

for 2006, an hourly rate of \$500 for Florio for 2007, and an hourly rate of \$290 for Hawiger for 2007.

### **6.3. 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 points out that it is difficult to establish a specific dollar amount for the quantifiable benefits to ratepayers in this proceeding. However, as a result of TURN's participation, ratepayers will not be forced to pay for system expansions at Otay Mesa. TURN's advocacy also prevented the elimination of the peaking rate. In addition, TURN reduced the utilities' recovery of the citygate pooling costs from \$2 million to \$500,000, which amounts to a savings of \$1.5 million for ratepayers.

We find that TURN's participation in this proceeding was productive, and bears a reasonable relationship to its participation.

### **6.4. Direct Expenses**

The itemized direct expenses submitted by TURN include costs for photocopying, postage, telephone charges, and attorney expenses related to parking, which total to \$207.04. Appendix B of TURN's compensation request provides a cost breakdown of these expenses. We find these costs to be reasonable, and commensurate with the work performed.

## **7. Award**

We award TURN the full amount of its request, \$87,958.29 for its substantial contributions to D.06-04-033 and D.06-012-031.

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 April 29, 2007, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

The award is to be paid by SoCalGas as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. 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.

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

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **9. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. TURN made substantial contributions to D.06-04-033 and D.06-12-031 as described herein.

3. TURN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. TURN's participation was productive and bears a reasonable relationship to its participation.

5. TURN requested related expenses that are reasonable and commensurate with the work performed.

6. The total of the reasonable compensation is \$87,958.29.

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

### **Conclusions of Law**

1. TURN has fulfilled the requirements of Public Utilities Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.06-04-033 and D.06-12-031.

2. TURN should be awarded \$87,958.29 for its contributions to D.06-04-033 and D.06-12-031.

3. Per Rule 14.6(c)(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 \$87,958.29 as compensation for its substantial contributions to Decision (D.) 06-04-033 and D.06-12-031.

2. Within 30 days of the effective date of this decision, Southern California Gas Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 29, 2007, the 75<sup>th</sup> 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.

This order is effective today.

Dated April 12, 2007, at San Francisco, California

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0704031	<b>Modifies Decision?</b> n/a
<b>Contribution Decision(s):</b>	D.06-04-033 and D.06-12-031	
<b>Proceeding(s):</b>	A04-12-004	
<b>Author:</b>	ALJ Wong	
<b>Payer(s):</b>	Southern California Gas 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>
The Utility Reform Network	2/13/07	\$87,958.29	\$87,958.29	No	

## 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>
Michel	Florio	Attorney	The Utility Reform Network	\$470	2005	\$470
Michel	Florio	Attorney	The Utility Reform Network	\$485	2006	\$485
Michel	Florio	Attorney	The Utility Reform Network	\$500	2007	\$500
Hayley	Goodson	Attorney	The Utility Reform Network	\$195	2006	\$195
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2004	\$270
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2005	\$270
Marcel	Hawiger	Attorney	The Utility Reform Network	\$280	2006	\$280
Marcel	Hawiger	Attorney	The Utility Reform Network	\$290	2007	\$290

(END OF APPENDIX)

