Decision 07-05-018 May 3, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company and San Diego Gas & Electric Company for the 2005 Nuclear Decommissioning Cost Triennial Proceeding to Set Contribution Levels for the Companies' Nuclear Decommissioning Trust Funds and Address Other Related Decommissioning Issues.	Application 05-11-008 (Filed November 10, 2005)
Application of Pacific Gas and Electric Company in Its 2005 Nuclear Decommissioning Cost Triennial Proceeding.	Application 05-11-009 (Filed November 10, 2005)

OPINION ON COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-01-003 BY THE UTILITY REFORM NETWORK IN THE TRIENNIAL REVIEW OF NUCLEAR DECOMMISSIONING TRUSTS AND RELATED DECOMMISSIONING ACTIVITIES

1. Summary

This decision grants $50,720 in compensation for substantial contributions to Decision (D.) 07-01-003 to The Utility Reform Network (TURN) who intervened as a customer of Pacific Gas and Electric Company (PG&E). We find that TURN's contributions benefit customers of Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) as well as PG&E's customers, and we therefore direct PG&E, Edison and SDG&E to each pay a portion of the award.

2. Background

In D.07-01-003, dated January 11, 2007, the Commission adopted an all-party settlement for Edison and SDG&E which resolved all issues in a Joint Application (A.) 05-11-008. We also adopted a separate settlement for PG&E in A.05-11-009 which resolved all ratemaking issues exclusive of the issues litigated by PG&E and a customer-intervenor, Scott L. Fielder.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings.[1] The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) to claim compensation within 30 days of the prehearing conference, or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

[1] Subsequent statutory references are to the Public Utilities Code.

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, we combine the procedural issues in Items 1 - 4, followed by separate discussions of Items 5 - 6.

4. Procedural History

Notice of these two applications appeared in the Commission's Daily Calendar on November 16, 2005. The Commission preliminarily categorized them as ratesetting in Resolution ALJ 176-3162, dated November 18, 2005. The January 18, 2006 scoping ruling confirmed the categorization as ratesetting, and the need for hearings. The scoping ruling also consolidated the applications. The Division of Ratepayer Advocates (DRA), the Federal Executive Agency (FEA),[2] The Utility Reform Network (TURN), and Scott L. Fielder (Fielder) all served testimony in the proceeding. All parties served timely rebuttal and other supplemental testimony as allowed or required by the assigned Administrative Law Judge (ALJ). The two settlements were admitted as Exhibits 18 and 19 at evidentiary hearings. These settlements resolved all issues for Edison and SDG&E in A.05-11-008 and resolved all issues except those litigated by PG&E and Fielder in A.05-11-009. Parties filed

[2] FEA participated only in the settlement for A.05-11-008.

opening briefs or comments on the settlements on June 23, 2006, and replies on July 14, 2006.

TURN filed a timely Notice of Intent to Claim Compensation (Notice) and an Administrative Law Judge's (ALJ) Ruling dated February 23, 2006 found TURN was eligible for compensation. TURN filed a timely Request for Compensation (Request) on March 13, 2007.

Section 1802(b)(1) defines a "customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to it articles of incorporation or bylaws to represent the interests of residential or small business customers. TURN is a group or organization meeting § 1802(b)(1)(C). (Ruling dated February 14, 2006.)

5. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. TURN has previously been found to meet the financial hardship test in the earlier ALJ Ruling.

6. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we consider whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (*See* § 1802(i).) If the customer's contentions or recommendations paralleled those of another party, we consider whether the customer's participation materially supplemented, complemented, or contributed 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 the record 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.

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 served testimony applicable to all three applicants addressing:

1. reasonableness of the decommissioning cost estimates,
2. estimated investment returns on the trust fund balances, contingency factors,
3. appropriate equity/debt investment ratios for the trust funds,
4. license renewal assumptions,
5. the transfer of funds between trusts, and
6. specifics related to the calculation of cash working capital for the decommissioning trust fund.

After serving testimony, TURN entered into concurrent parallel settlement negotiations with the applicants and other parties and reached agreements on

both applications. After submission of the settlements, TURN worked with the settling parties to advocate for adoption of the settlements through evidentiary hearings, joint filings, and comments on the proposed decision. The settlements were approved without modification in D.07-01-003. D.07-01-003 established guidelines applicable to all three applicants concerning the necessity to ensure that the utilities employ sufficient well-trained and experienced personnel to plan and direct the complex task of decommissioning a retired nuclear generating facility. The decision also directed the parties to perform in-depth analyses of storage costs and contingencies for the next triennial proceedings for all three utilities.

Both settlement agreements incorporate significant concessions by the applicants in response to issues raised by TURN and DRA. Specifically, the settlements reflect a number of specific contributions tied to testimony submitted by TURN witnesses. Although the detailed settlement discussions are confidential under Commission rules, the results demonstrate that TURN's participation produced tangible changes to these applications to the benefit of ratepayers. For example, the two settlements include the following provisions influenced by TURN's testimony:

1. Edison's decommissioning revenue requirement for San Onofre Nuclear Generating Station (SONGS) and Palo Verde was settled at $15.6 million (or 27%) below the original application.
2. SDG&E's decommissioning revenue requirement for SONGS was settled $2.7 million (or 22.4%) below the original application.
3. Edison agreed to use a higher assumed rate of return for a different Global Insight forecast period and to assume a 60% investment allocation to equities.

4. The settlement adopted TURN's proposed 21% contingency factor, instead of Edison's 35%, for all components of the Palo Verde estimate with the exception of low-level radioactive waste burial costs.
5. The settlement required Edison and SDG&E to deposit any funds received from the United States Department of Energy (US DOE) pursuant to spent fuel litigation into the decommissioning trusts and to update the prospective contributions required by ratepayers.
6. PG&E's decommissioning revenue requirement for Diablo Canyon was set $7.664 million (or 80%) below the original application, and the revenue requirement for Humboldt was set $2.706 million (or 18.5%) below the original application.
7. The PG&E settlement assumed a higher rate of return on the trust fund investments to reflect updated 10-year forecasts by the Russell Investment Group (8.5% equity returns, 5.8% fixed income returns).
8. The settlement assumed that Diablo Canyon Unit 1 continues to operate through 2024, rather than 2021, to reflect the license recapture requested by PG&E at the U.S. Nuclear Regulatory Commission.
9. The settlement updated the payroll tax burden for 2006 SAFSTOR costs at Humboldt to reflect the lower forecast contained in PG&E's 2007 General Rate Case and contribute the difference for 2006 to the decommissioning trust fund.
10. PG&E's settlement agreement assumed a 57%/43% equity/bond allocation for trust investments and the resulting higher returns associated with this portfolio.
11. The settlement required PG&E to request authority to transfer funds between Diablo Unit 2 and Unit 1, subject to the approval of the U.S. Nuclear Regulatory Commission and the Internal Revenue Service. The settlement would reallocate $33.5 million in previously collected excess funds from the Unit 2 trust to the Unit 1 trust.

We find that TURN did make a substantial contribution to D.07-01-003.

7. 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 that is unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if its participation materially supplemented, complemented, or contributed to that of another party if that participation made a substantial contribution to the commission order. In a proceeding involving multiple participants, it maybe impossible to completely avoid some duplication of the work of other parties. In this proceeding the parties coordinated their data requests and analysis to minimize duplication. The settlements saved further time and expense by the Commission, parties and applicants.

8. Reasonableness of Requested Compensation

TURN requests $50,720 for its participation in this proceeding.[3] 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.

8.1 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

[3] TURN corrected a mathematical error in its Request by email on March 21, 2007 from $50,023 to $50,720. The costs as included in the request totaled $50,720.

determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN documented its claimed hours by presenting a daily breakdown of the hours, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

Compensation Request by TURN			
Attorneys - 2006			
Robert Finkelstein	.25 hours (comp.)	$205	$51
Mathew Freedman	63.5 hours	$280	$17,780
	12 hrs (comp)	$140	$1,680
Hayley Goodson	3 hours	$195	$585
Expert Consultants - 2006			
David Schlissel	126 hours	$180	$22,680
Kenji Takahashi	42.5 hours	$105	$4,463
William Marcus	12.42	Pre May 1 $210	$2,608
	3.17	Post May 1 $220	$697
Expenses			$176
Total			**$50,720**

8.2 Hourly Rates

We next consider 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.

8.2.1 Attorneys

TURN requests $205/hr. for Finkelstein for 0.25 hours work on the compensation request. This is 50% of the 2006 rate of $405 adopted in D.06-10-018 and we use this rate here without further discussion. For Freedman, TURN asks for $280/hr. which is the 2006 rate adopted in D.06-10-018 and we use this rate here without further discussion. TURN correctly adjusts the rate by

50% for compensation request-related work. Finally, TURN asks for $195/hr. for Goodson for only three hours' work which is less than a 3% increase over the $190/hr. rate adopted for 2005 in D.06-04-012. D.07-01-009 adopted a general increase of 3% for 2006 over 2005 rates (Slip Op., p. 8) and therefore we adopt the $195/hr. rate here.

8.2.2 Experts

TURN requests rates of $210/hr. and $220/hr. for Marcus for 2006 hours before and after May 1, 2006, respectively. TURN argues that this increase is less than the 3% generally adopted for all experts for 2006 over 2005 rates and the split reflects the fact that Marcus billed TURN at the 2005 rate of $210 in early 2006 due in part to the uncertainty of the Commission's actions in Rulemaking 06-08-019, which adopted 2006 rates. A 3% increase would have resulted in a rate of $215. In light of Marcus billing at $210 and then $220 (for only 3.17 hrs.) we will adopt the rates requested for this proceeding only and compensate TURN for the actual billing. For Schlissel, TURN asks for $180/hr. the same rate the Commission approved for his work during 2004 and 2005 in D.06-06-057 and D.06-07-011. We use this rate here. The Commission has never set a rate for Takahashi. Takahashi holds an MA in Urban Affairs and Public Policy, with a concentration in Energy and Environmental Policy, from the University of Delaware and a BA in Law with a concentration in Public Administration from Kansai University in Osaka Japan. TURN requests a rate of $110/hr. which is below the bottom rate in the expert range ($115 - $370) adopted in D.07-01-009. This is a reasonable rate and we adopt it here.

8.3 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.

The decision adopted ratemaking settlements which lowered the collective revenue requirements of SDG&E, Edison, and PG&E by approximately $29 million per year. Over the three-year cycle covered by these applications, the cumulative reduction is $87 million. Based on the value of the adjustments achieved in the settlements to lower ratepayers' obligations, we can find that TURN and the other settling parties were productive in this proceeding.

8.4 Direct Expenses

The itemized direct expenses submitted by TURN include costs for travel, photocopying, postage, telephone/fax, etc., and total $176. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

9. Award

We award TURN the full request of $50,720. Consistent with previous Commission decisions, we order that interest be paid on the award amount.

The ratepayers of all three companies will benefit from the settlements. It is therefore reasonable to assign a portion of the compensation to Edison and SDG&E. The Commission has discretion on how to fairly allocate compensation between utilities. Allocation of the award could be based on various factors, including the relative size of the funds or the impact of the recommendations on the utility, etc. Therefore, we will assign 40% ($20,288) to Edison, 20% ($10,144) to SDG&E, and PG&E shall pay the balance of 40% ($20,288).

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.

10. 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.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Douglas Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.07-01-003 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 requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is $50,720.
6. TURN's contributions benefit the ratepayers of all three applicants: PG&E, Edison, and SDG&E.
7. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 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.07-01-003.

2. TURN should be awarded $50,720 for its contribution to D.07-01-003, plus interest commencing on the 75th day after the filing of the compensation request.

3. The award may be allocated between the three utilities because ratepayers of all three companies benefit from TURN's contributions.

4. Per Rule 14.6(c)(6), the comment period for this compensation decision may be waived.

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

6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $50,720 as compensation for its substantial contributions to Decision 07-01-003.

2. Interest shall 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 May 28, 2007, the 75th day (first business day) after TURN filed the compensation request, and continuing until full payment of the award is made.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric

Company shall pay TURN $10,144 plus interest. Each shall pay TURN $20,288 plus interest.

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

5. Application (A.) 05-11-008 and A.05-11-009 are closed.

This order is effective today.

Dated May 3, 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

Compensation Decision:	D0705018	**Modifies Decision?** **N/A**
Contribution Decision(s):	D0701003	
Proceeding(s):	A0511008 and A0511009	
Author:	ALJ Long	
Payer(s):	Pacific Gas and Electric Company; Southern California Edison Company, and San Diego Gas & Electric Company.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network (TURN)	3/12/07	$50,720	$50,720	No	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	$205 (50%)	2006	$205 (50%)
Mathew	Freedman	Attorney	The Utility Reform Network	$280	2006	$280
Hayley	Goodson	Attorney	The Utility Reform Network	$195	2006	$195
David	Schlissel	Expert	The Utility Reform Network	$180	2006	$180
Kenji	Takahashi	Expert	The Utility Reform Network	$105	2006	$105
William	Marcus	Expert	The Utility Reform Network	$210	2006 Pre 5/1	$210
William	Marcus	Expert	The Utility Reform Network	$220	2006 Post 5/1	$220

(END OF APPENDIX)