Decision 07-11-033 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Incremental Costs Related to the 2005-2006 New Year's Storms and July 2006 Heat Storm Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U39E)	Application 06-11-005 (Filed November 13, 2006)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-07-041

1. Summary

This decision awards $16,208.67 to The Utility Reform Network (TURN) in compensation for its substantial contributions to Decision (D.) 07-07-041. This proceeding remains open for Phase 2.

2. Background

Pacific Gas and Electric Company (PG&E) requested recovery for costs which were alleged to be caused by the hot weather of July 2006, where certain equipment of PG&E failed. In part of this application, PG&E characterizes this event as catastrophic and sought to have its expenses and investments in repairing the damage given the extraordinary ratemaking treatment allowed under certain circumstances through its Catastrophic Event Memorandum Account (CEMA). We found that PG&E had not satisfied the applicable

eligibility standards for CEMA ratemaking treatment. We therefore denied the application in D.07-07-041.

3. Requirements for Awards of Compensation

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

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) to claim compensation within 30 days of the prehearing conference (prehearing conference), or at another appropriate time 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

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

whole or in part, of the intervenor's contention or recommendations by a Commission order or decision.

6. The claimed fees and costs must be 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).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

3.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1) of the Commission's Rules of Practice and Procedure (Rules), customers who intend to seek an award of intervenor compensation must file the Notice before certain dates. Notice of the application appeared in the Commission's Daily Calendar on November 16, 2006. The Commission preliminarily categorized it as ratesetting in Resolution ALJ 176-3183, dated November 30, 2006 and also determined that hearings were necessary. DRA and TURN filed timely protests on December 18, 2006. PG&E replied timely on January 2, 2007. By a ruling dated December 1, 2006, PG&E was directed to serve copies of any and all documentation that supports the assertion of government-declared disasters relating to the 2005-2006 New Year's Storms and the July 2006 Heat Storm. In response to the ALJ's telephone request, PG&E served the relevant volume of workpapers on November 30, 2006 before service of the ruling. (Ex. PG&E-2.)

Several significant issues were raised which warranted a prehearing conference prior to the Commissioner issuing a scoping memo pursuant to Rule 7.3. The prehearing conference was held on January 4, 2007. The scoping memo confirmed the categorization as ratesetting. At the January 4, 2007

prehearing conference, the Administrative Law Judge (ALJ) indicated that he found the application was unclear on the basis for PG&E's request to recover costs for the hot weather in July 2006 as a catastrophic event, pursuant to PG&E's tariff (Ex. PG&E-2, pp. 1-2 and 1-2) and Resolution E-3238 (Ex. 4). PG&E provided an explanation of its justification.[2] After consultation with the assigned Commissioner, an ALJ ruling was issued on January 17, 2007 finding that based upon the preliminary review of the application, supporting exhibits, and the prehearing conference statements and transcript, PG&E had not proven its case and did not appear likely to demonstrate that the hot weather in July 2006 was an eligible catastrophic event.[3] Nevertheless, the ruling provided for a further round of argument. Pursuant to the ruling, PG&E filed further argument on January 31, 2007 and on February 9, 2007 the Division of Ratepayer Advocates (DRA), TURN, and Southern California Edison Company (Edison) filed replies.

In a proceeding in which a prehearing conference is held, an intervenor must file and serve its Notice between the date the proceeding was initiated until 30 days after the prehearing conference is held. (Rule 17.1(a)(1).) TURN timely filed its Notice on February 5, 2007 stating that it is a customer pursuant to § 1802(b), has met the requirement for financial hardship pursuant to § 1804(a)(2)(B), and is eligible for intervenor compensation.

Section 1802(b)(1) defines a "customer" as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has

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[2] TR. pp. 8 – 11.

[3] See Cal. Evid. Code § 500: Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

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. (§ 1802(b)(1)(A) through (C).)

TURN's articles of incorporation specifically authorize it to represent the interests of residential customers.

The assigned ALJ did not issue a ruling concerning TURN's eligibility. TURN previously received numerous findings of significant financial hardship in ALJ rulings in every proceeding where it has received compensation; e.g., D.07-09-008. Therefore, TURN meets the financial hardship condition pursuant to § 1804(b)(1) through a rebuttable presumption of eligibility because the Commission found TURN met this requirement in another proceeding within one year of the commencement of this proceeding. Additionally, TURN has satisfied the requirement that it is a customer. In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, to determine whether the customer's participation unnecessarily duplicated or 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. (§§ 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.[4]

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. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN alleges that it was an active participant in the proceeding. The first phase of this proceeding addressed a legal and policy issue of first impression – whether PG&E's request to record in its CEMA certain costs related to transformer damage that occurred during the hot weather in July of 2006 was eligible under to the statutory requirement for a disaster declaration "by competent state or federal authorities." TURN provided both legal and factual arguments that these costs were not eligible for CEMA.

TURN reached the same conclusion as DRA, but TURN offered unique legal and factual arguments. The Commission agreed with TURN and DRA on the outcome, and the Commission adopted several of TURN's specific legal and

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[4] D.98-04-059, 79 CPUC 2d 628 at 653.

factual analyses and arguments. TURN did not prepare testimony but did file briefs in accordance with the ALJ's rulings.

4.1. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation 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 supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

Here, duplication is not an issue even though TURN's proposal was generally aligned with DRA and the two intervenors coordinated. DRA's legal analysis focused on, among other issues, the question of whether declarations by federal agencies and county governments were "competent" based on the nature of agency activity and expertise. TURN was the only party that addressed the legislative history of § 454.9 and the lack of a factual geographic link between the claimed disaster areas and any identified utility damage. The Commission relied on these two analyses in its final decision.[5]

5. Reasonableness of Requested Compensation

TURN requests $16,208.67 for its participation in this proceeding. 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

[5] The ALJ's proposed decision relied on the TURN's legislative history argument and DRA's competency argument and did not reach to the geographic link.

in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

5.1. 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.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity.[6] The hourly breakdown reasonably supports the claim for total hours.

5.2. Intervenor 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.

TURN seeks the same hourly rates for 2007 for the three TURN attorneys previously requested in a compensation request in A.05-02-012 file on May 21, 2007. There has been no decision on that request. TURN further requests that the Commission authorize 2007 rates in this docket. D.07-01-009 allowed intervenor representatives to request annually a step increase of 5% above their adopted rates from the previous year. The 5% step increase is in addition to a 3% cost-of-living adjustment over the previous year rates. The 2006 hourly rates for Mr. Hawiger, Mr. Finkelstein and Ms. Suteake were previously approved in D.06-10-018. The hourly rates requested for 2007 for all three attorneys are

[6] See Appendix A of TURN's Request for Compensation.

consistent with the guidelines set forth in D.07-01-009. TURN similarly used a previously approved a rate for William Marcus of $220 per hour.[7] We find all these rates to be reasonable and we will adopt them for this decision.

5.3. 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.

In this proceeding, TURN points out that its request of $16,208 is minor compared to the PG&E requested recovery of $41,840,000 in costs resulting in a potential revenue requirement increase of $34,770,000 ($4,800,000 in expense and $29,970,000 in capital.)[8] Therefore, TURN's costs are not excessive compared to the rate impact under consideration in phase 1.

5.4. Direct Expenses

TURN requests $259.92 in direct expenses. (Request, Attachment B.) We find this request reasonable.

6. Award

As set forth in the table below, we award TURN $16,208.67.

Work on Proceeding				
Attorney/Expert	**Year**	**Hours**	**Hourly Rate**	**Total**
Robert Finkelstein	2007	2.00	$435	$870.00
Nina Suetake	2007	1.50	$210	315.00

[7] D.07-05-043, p. 16.

[8] Ex. PG&E-1, p. 6-2.

Work on Proceeding				
Attorney/Expert	**Year**	**Hours**	**Hourly Rate**	**Total**
Marcel Hawiger	2006	3.25	$280	910.00
	2007	42.50	$300	12,750.00
William Marcus	2006	1.25	$220	275.00
Preparation of Notice and Compensation Request				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
Nina Suetake	2007	0.75	$105	78.75
Marcel Hawiger	2007	5.00	$150	750.00
Expenses				
Direct Expenses				$259.92
TOTAL Award				**$16,208.67**

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 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 PG&E.

7. Waiver of Comment Period

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

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and Douglas M. 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.07-07-041 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. The total of the reasonable compensation is $16,208.67.

5. 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.07-07-041.

2. TURN should be awarded $16,208.67 for its contribution to D.07-07-041.

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

4. This proceeding should remain open for Phase 2.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $16,208.67 as compensation for its substantial contributions to Decision 07-07-041.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric 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 on December 12,

2007, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 06-11-005 is still open for Phase 2.

This order is effective today.

Dated November 16, 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:	D0711033	**Modifies Decision?** **No**
Contribution Decision(s):	D0707041	
Proceeding(s):	A0611005	
Author:	ALJ Long	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	9/28/07	$16,208.67	$16,208.67	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	$435	2007	$435
Nina	Suetake	Attorney	The Utility Reform Network	$210	2007	$210
Marcel	Hawiger	Attorney	The Utility Reform Network	$280	2006	$280
Marcel	Hawiger	Attorney	The Utility Reform Network	$300	$2007	$300
William	Marcus	Expert	The Utility Reform Network	$220	2006	$220

(END OF APPENDIX)