

Decision 08-04-022 April 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001;
reopened December 10,
2007)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL
CONTRIBUTIONS TO THE PROGRAM ADVISORY GROUPS AND
PEER REVIEW GROUPS IN THIS PROCEEDING**

This decision awards The Utility Reform Network (TURN) \$132,017.33 in compensation for its substantial contributions to the Commission's decision to adopt utility energy efficiency portfolios for 2006-2008. To that end, TURN participated in the Program Advisory Groups (PAGs) and Peer Review Groups (PRGs) established in Decision (D.) 05-01-055. TURN had requested \$174,894.17, which is reduced to reflect excessive hours and hours spent on activities that are not compensable.

1. Background

The subject rulemaking is the Commission's generic energy efficiency proceeding. In D.05-01-055, we established the administrative structure for post-2005 energy efficiency programs for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric

Company (SDG&E), and Southern California Gas Company (SoCalGas),¹ and directed the utilities to form two sets of advisory groups to help develop and implement their 2006-2008 energy efficiency portfolio plans. TURN claims compensation for the amount of \$174,894.17 for participating in these advisory groups.

The purpose of the advisory groups was to help with program design and implementation and also to safeguard against the potential for bias in program selection and portfolio management. The advisory groups helped design and assess utility energy efficiency portfolios and program selections by providing advice and feedback to the utilities and annual information to the Commission.

Two sets of advisory groups were established. First, PAGs were formed in utilities' service territories² to provide guidance to the utilities regarding region-specific customer and program needs, and to coordinate statewide programs that cut across utility service territories. Second, the PRGs were formed as subgroups to PAGs to serve as peer reviewers in the bid evaluation process. Among other issues, the PRGs were responsible for reviewing the utilities' bid selection process for program implementers and reviewing the utilities' compliance filings. In addition, the Commission directed the utilities to form a subgroup of their PAG members to closely collaborate and coordinate on statewide program design and activities that secure both short- and long-term energy savings and peak demand reductions.

¹ Collectively, "the utilities."

² Three PAGs were formed: one in PG&E's service territory, one in SDG&E's service territory and one in the combined service territories of SoCalGas and SCE.

More generally, the Commission directed the utilities to work closely with their PAGs throughout the 2006-2008 program cycle.³ Similarly, the Commission directed that “Involvement of the PRGs in an advisory capacity to the utilities shall continue throughout the 2006-2008 program cycle.”⁴

PAG and PRG members consisted of staff from the Commission’s Energy Division (ED) and the Division of Ratepayer Advocates (formerly the Office of Ratepayer Advocates) as ex officio members. Other group members were selected by the utilities to participate in the process on a voluntary basis.⁵ Both groups were expected to meet and confer with the utilities on issues such as program design, selection, and portfolio management. The groups would then provide written comments to the utilities as appropriate, and provide feedback to the Commission on utilities’ plans and bidding process. The Commission determined in D.05-01-055 that those parties eligible to receive intervenor compensation for awards in energy efficiency proceedings may seek compensation for their work in the utility advisory groups.⁶

PG&E and SCE/SoCalGas selected TURN representatives to participate on their respective PAGs and PRGs and to review their proposed portfolio plans and funding levels for the 2006-2008 program cycle in Application (A.) 05-06-004 *et al.* The proposed portfolio plans were reviewed by the Commission in D.05-09-043. Following the adoption of utilities’ overall

³ D.05-01-055, *mimeo.*, p. 95.

⁴ D.05-09-043, Ordering Paragraph (OP) 21.

⁵ See Attachment 2 to D.05-09-043 for the composition of each PAG/PRG and a summary of the purpose, along with a description of the PAG/PRG process through the portfolio planning phase of the proceeding, i.e., through April 2005.

efficiency portfolios in D.05-09-043, the utilities conducted competitive solicitations for certain programs.

TURN seeks compensation for work it performed as a member of the PG&E and SCE/SoCalGas PAGs and PRGs over the course of about 16 months, between December 2004 and April 2006. The work was not conducted in this proceeding but it is reasonable that TURN filed its request in this proceeding, which adopted guidelines for the development of the 2006-2008 utility energy efficiency program portfolios.

No party opposed TURN's request for compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,⁷ requires California-jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to a Commission order or decision. 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 (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).)

⁶ D.05-01-055, *mimeo.*, p. 95.

⁷ All statutory references herein are to the Public Utilities Code unless otherwise indicated.

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 or as otherwise found by the Commission. (§§ 1802(i), 1803(a).)
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).

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

3. Procedural Issues

The first PHC in this proceeding was held on September 10, 2001. TURN timely filed its NOI on October 10, 2001. In its NOI, TURN asserted financial hardship.

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 November 1, 2001, Administrative Law Judge (ALJ) Thomas ruled that TURN is a customer

pursuant to § 1802(b)(1)(C), and meets the financial hardship condition, pursuant to § 1802(g).

TURN filed its request for compensation (TURN Request) on June 15, 2006, within 60 days of Rulemaking (R.) 06-04-010, our order that closed the subject rulemaking and carried over continuing energy efficiency program oversight.

On November 16, 2007, the Commission issued D.07-11-024 to provide guidance to parties seeking intervenor compensation for work performed in PRGs, PAGs and the Procurement Review Groups established for supply-side procurement. The decision specified that where an intervenor had a pending request for compensation that included work on these groups, the intervenor could supplement the pending request, as appropriate, to provide additional explanation or information discussing the application of the new guidelines to the pending request.⁸ Such supplements were to be filed and served no later than 30 days after the effective date of D.07-11-024 (i.e., no later than December 17, 2007). TURN filed a supplement to its request for compensation on December 10, 2007 (TURN Supplement).

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

As we stated in D.07-11-024, intervenor participation in PRGs, PAGs and other non-traditional forums, such as settlements, present particular challenges for intervenors and the Commission in the context of intervenor compensation:

Some of the work undertaken in such collaborative processes by its nature results in activities, if not analysis and ideas, that overlap

⁸ D.07-11-024, OP 2.

with the work of others. Also, Administrative Law Judges do not directly oversee this work and, therefore, cannot make a first-hand assessment of an intervenor's effectiveness and ultimate contributions to a Commission decision. In spite of these challenges, we have sought to provide compensation to intervenors who participate in these groups to the extent such participation is consistent with Public Utilities Code §§ 1801-1812.⁹

In order to compensate intervenor groups, §§ 1801-1812 establish the criteria under which an intervenor may be compensated for participating in Commission proceedings. Most germane to our order today are the following requirements:

The intervenor must demonstrate 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).)

The customer's participation must not duplicate the presentations of other parties although it may materially supplement, complement, or contribute to the presentation of another party. (§§ 1801.3(f) & 1802.5.)

"Compensation" means payment for all or part, as determined by the Commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding. (§ 1802(a).)

The statute provides the Commission with latitude on how to implement the provisions of §§ 1801-1812 and the Commission has interpreted the statute to encourage participation in its proceedings. However, we did not intend to forgo an analysis of "substantial contribution" or "reasonableness of the amount requested" when we stated that active participation in PRGs and PAGs makes a

⁹ D.07-11-024, mimeo., pp. 3-4.

significant contribution. Accordingly, to promote the efficient and effective review of intervenor compensation requests that involve PRGs and PAGs, we clarified in D.07-11-024 that compensation requests must include enough information for the Commission to make the findings required by §§ 1801-1812.¹⁰

More specifically, we directed that:

1. To evaluate the reasonableness of the requested compensation, the intervenor should explain the types of programs, policies, practices or documents reviewed in connection with its PRG or PAG work and how that work contributed to an outcome that benefited ratepayers;
2. The intervenor should address how its work added value to the review or advisory process because of the intervenor's unique analysis, perspective or work product or because of specific expertise or skills of the intervenor;
3. The intervenor should adequately describe its contributions to meetings or document review, and distinguish those contributions from other PAG/PRG members, consistent with § 1802.5. The intervenor should also demonstrate reasonable collaboration with other group members to minimize duplication of effort; and
4. The intervenor should provide the date, duration, and location of the PRG or PAG meeting for which compensation is requested and whether the intervenor attended in person or participated telephonically. If more than one member of the intervenor's group attends a meeting, the intervenor should provide justification for the staffing decision.

¹⁰ D.07-11-024, *mimeo.*, p. 5.

Finally, we identified the following two types of activities for which we would not compensate intervenors:

In the past, the Commission has reviewed intervenor timesheets which include tasks that might be considered staff work, *i.e.*, work normally conducted under the direction of either a utility or Commission manager, including the implementation of program details according to that manager's discretion. We will not compensate intervenors for this type of work.

Nor will we compensate under the intervenor compensation statute for participation in ad hoc technical review committees that Energy Division may informally convene outside of these groups, as needed, in order to assist in carrying out its ongoing evaluation, measurement and verification (EM&V) responsibilities. In D.05-01-055, we encouraged Energy Division to draw on the experience of the Public Interest Energy Research (PIER) program run by the California Energy Commission (CEC) in creating such committees for its own purposes. Based on the CEC's experience with the PIER ad hoc committees, we concluded that this approach could draw on a pool of EM&V experts in California and other states who are willing and able to provide Energy Division with technical feedback at "very little or no cost" to ratepayers. [Footnote omitted.] Energy Division is currently investigating the payment of per diems to participants in ad hoc technical review committees. However, we do not modify D.05-01-055 to identify this type of participation in energy efficiency implementation activities as eligible for intervenor compensation, as one intervenor has recently suggested in R.06-04-010. [Footnote omitted.]¹¹

In its request for compensation, TURN describes the nature of its participation in the PRGs and PAGs for energy efficiency. Haley Goodson (TURN attorney) and Cynthia Mitchell (consultant to TURN) were selected to

¹¹ D.07-11-024, *mimeo.*, pp. 6-7.

represent TURN on PG&E's PAG. Mitchell also represented TURN on PG&E's PRG. In addition, Mitchell was selected as TURN's representative to the SCE/SoCalGas PAG and PRG.

TURN states that its representatives actively participated in each PG&E and SCE/SoCalGas PAG and PRG meeting. In addition, TURN describes how its participation on these advisory groups helped shape the first statewide PAG working group to further explore program options for heating, ventilating and air conditioning (HVAC)¹² and how it led post-meeting follow-up projects. TURN also states that it encouraged the first statewide PAG meeting between the PAGs and utility administrators to discuss various energy efficiency activities and programs at a statewide forum to achieve economies of scale and scope at a state level. In addition, TURN describes how it assisted with the preparation of PRG assessments of the utilities' portfolios, and developed criteria for evaluating whether the proposed portfolios would satisfy near term savings targets. TURN states that its participation also helped with the processing of the utilities' compliance advice letters. Finally, TURN states that it led the PRG compliance phase effort directed at ensuring that the local government partnership "experiment" was given an opportunity to run in a fair and reasonable manner.¹³

By D.05-09-043, we recognized the overall contribution of the PRG and PAG process to our decision approving the overall level of funding and portfolio plans in D.05-09-043. In that decision, we concluded, "By all accounts, the

¹² Referred to as the "HVAC PAGette."

¹³ See TURN Request, pp. 3-5 and TURN Supplement, pp. 3-4.

advisory group process established by D.05-01-055 was constructive and collaborative, and based on the filings in these proceedings, has served this Commission well.”¹⁴ More recently, we found in D.06-04-005 that input from the PAG and PRG process “substantially shaped the utilities’ applications and the Commission’s final decision on those applications.”¹⁵ Based on TURN’s description and documentation of PRG and PAG activities, we conclude that TURN’s participation as a member of the energy efficiency PRGs and PAGs during the planning and compliance phases for the 2006-2008 program cycle substantially contributed to the constructive and collaborative input of these groups. In addition to actively contributing to the portfolio and funding review process that led to a full Commission decision in D.05-09-043, TURN’s participation on the PRGs substantially contributed to the development of detailed assessments of the utility compliance filings. These assessments were, in turn, appended to the advice letter compliance filings and discussed by ED in its approval of the utilities’ compliance plans.¹⁶

However, not all of the hours that TURN includes in its request are eligible for compensation. Under the issue area entitled “Energy Efficiency Portfolio

¹⁴ D.05-09-043, *mimeo.*, p. 95.

¹⁵ D.06-04-005, *mimeo.*, p. 9 (awarding intervenor compensation to the Natural Resources Defense Council for PAG and PRG related work).

¹⁶ Pursuant to D.05-09-043, the utilities filed compliance advice letters instead of applications because each of the PRGs was able to reach consensus with the utilities on their respective compliance plans. ED approved the plans, which were informed by PRG reports and the input from the advisory groups. *See: ED Disposition of SCE Advice Letter 1955-E, dated April 18, 2006; ED Disposition of SoCalGas Advice Letter 3588-G, dated April 28, 2006; ED Disposition of PG&E Advice Letters 2704-G/2786-E, 2704-G-A/2786-E-A, dated June 1, 2006.*

Planning” (EPPP), TURN requests compensation for 106 hours of work by its consultant, Mitchell. Nearly 80 hours of that work was conducted prior to the issuance of D.05-01-055, which authorized the creation of the PRG/PAG groups and subsequent selection of its members by the utilities.¹⁷ Even if this work resulted in documents that TURN subsequently presented to the PRG/PAG group and that were relevant to the issues being discussed in those meetings, we cannot award compensation for work conducted prior to the date in which the PRGs and PAGs were actually authorized by the Commission.

Moreover, the remaining 26 hours listed under EEGA are described as time that Mitchell spent revising and expanding a portfolio analysis she initiated prior to the issuance of D.05-01-055, training an assistant on how to analyze utility data, and conducting general research, such as reviewing the Commission’s procurement orders. These activities may well have improved the knowledge base and analytical capability of TURN’s consultant in energy efficiency matters, and therefore enhanced her capability to serve as a PRG/PAG member. Nonetheless, we do not believe that such research or training hours are properly charged to ratepayers for TURN’s participation as a PRG/PAG advisory group member.

In addition, our review of the hours submitted by TURN for Mitchell’s work as both a PRG/PAG representative and as an intervenor in Application (A.) 05-06-004 *et al.* reveals some duplication. By D.07-12-040, we awarded TURN compensation for its participation in that proceeding as a party in the

¹⁷ D.05-01-055 was issued on January 27, 2005. By OP 3, the Commission directed the utilities to “put together the advisory groups....and inform the assigned Commissioner

Footnote continued on next page

portfolio planning (Phase 1) and compliance phases for the 2006-2008 energy efficiency program cycle.¹⁸ We compensated TURN for over 150 hours of Goodson's attorney work and 150 hours of Mitchell's work as a technical consultant to TURN, most of which were hours spent on TURN's formal pleadings in Phase 1 and the compliance phase of D.05-09-043. Included in that award were 3.5 hours listed for Mitchell's work on June 4, 2005 described as "review TechMktWorks report." The exact same entry (and same number of hours on the same day) is included in TURN's Request for PRG/PAG work. Since we already authorized compensation for those hours in D.07-12-040, including them in this decision would be duplicative, and therefore we remove them.¹⁹

Even after making the above adjustments, TURN's compensation request is troubling for other reasons. First, it represents an unprecedented number of hours when considered in the context of other Commission awards for PRG/PAG participation. The 1,020 hours of consultant and attorney time for TURN's participation in the PAG/PRG process²⁰ is more than 40% higher than

and ALJ by letter of the individuals selected to serve on the Program Advisory Group and Peer Review Groups...."

¹⁸ We also awarded TURN compensation approximately 26 hours in that decision for its substantial contribution to D.06-12-013 addressing a petition to modify the Phase 1 decision, D.05-09-043.

¹⁹ See D.07-12-040, *mimeo.*, pp. 19-20. By letter dated January 9, 2008, TURN submitted supplemental information regarding hours for work related to the Case Management Statement that are referred to in D.07-12-040. TURN has adequately explained to our satisfaction how those hours are non-duplicative.

²⁰ After making the adjustments described above, TURN's request includes 854 hours for Mitchell and 160.25 hours for Goodson (not including time spent on preparing TURN's compensation request).

the 571 hours requested by the Natural Resources Defense Council (NRDC) and awarded by the Commission for NRDC's active participation in PRGs/PAGS over the same timeframe.²¹ While we recognize that it is very difficult to assess the relative level of effort or efficiency among advisory group participants by comparing the number of hours requested, the large disparity we observe here suggests to us that TURN's request is excessive.

Moreover, we note that TURN has been a party to this and related proceedings concurrently, with some of the same individuals participating in all dockets. It is very difficult to clearly delineate TURN's PRG/PAG work here from the hours of work that relate to TURN's participation as a formal party in other Commission proceedings. While in both instances we only give compensation for work contributing to Commission decisions, a request for compensation submitted by a party must demonstrate substantial contribution to issues addressed by the Commission in a decision, based on the written pleadings and other formal participation of that party. These requests are then reviewed and evaluated in the context of the Commission's written determinations on each issue. This type of showing (and issue-by-issue review of substantial contribution) is not required in requests for compensation for PRG/PAG participation due to the nature of the PRG/PAG's informal role in advising the utility program administrators during program implementation.

²¹ By D.06-04-005 and D.07-04-008, we compensated a combined total of 571 hours for NRDC's active participation in the PRG/PAG process through April 2006. As discussed in those decisions, NRDC was represented on all three PRG/PAGs. In that capacity, NRDC attended almost all of the PAG and PRG meetings for each utility as well as many of the PAGette meetings. NRDC also actively participated in the compliance phase activities of the PRGs. (See D.06-04-005, p. 8 and D.07-04-008, pp. 6-7.)

Therefore, we are also concerned that hours claimed by TURN here may represent work more properly submitted by TURN in compensation requests related to its participation in proceedings as a formal party, but for which it may not have been found eligible for intervenor compensation. In particular, we note that TURN was an active party to the 2006 Update of Avoided Costs in R.04-04-025 (2006 Update), which the Commission addressed in D.06-06-063. Among other things, the purpose of the 2006 Update was to (1) correct calculation anomalies in the spreadsheet models (“E3 calculators”) that the utilities use to calculate energy efficiency portfolio cost-effectiveness, (2) consider the various options for defining peak demand reductions contained in those models and adopt a definition for energy efficiency performance, (3) identify problems in existing load shape data and in establishing priorities and study scopes for load shape improvements by end uses/measures, and (4) update the interim avoided cost methodology and the E3 calculator to more accurately reflect impact of energy efficiency and other resources on peak/critical peak loads.

TURN representatives attended the multiple 2006 Update workshops that were held from early October 2005, to mid-March 2006, and TURN filed formal comments on March 9, 2006, March 27, 2006 and April 14, 2006.²² Workshop attendance records provided by the assigned ALJ indicate that Mitchell was one of TURN’s workshop participants, and TURN’s comments were filed by Goodson. We note that TURN prevailed on some issues addressed by D.06-06-063 (e.g., how to adjust avoided costs to better reflect the hourly load

²² See D.06-06-063, mimeo., pp. 12-14.

shapes for air conditioning end-uses), but not on others (e.g., whether to modify current avoided costs using a combustion-turbine adder or simple capacity adder approach). However, TURN did not seek intervenor compensation for its participation in the 2006 Update, so we have never addressed the issue of whether its participation as a party to that proceeding contributed substantially to the Commission's determinations.²³

Our review of TURN's request indicates instances where hours submitted for TURN's PRG/PAG work clearly overlap with TURN's participation as a party in the 2006 Update workshops. In particular, TURN lists time spent by Mitchell on April 7, 10 and 11, 2006 for statewide PRG/PAG work that are described as "emails & discussions with J. Hirsh. TRC errors E3 calculator." As discussed in D.06-06-063, Hirsch was one of the presenters at the 2006 Update workshops and TURN filed comments on the load factor weighting factors contained in that report on April 14, 2006.²⁴ There are other entries in the timesheets for Cynthia Mitchell over the October 2005 to mid-April time frame that suggest further overlap, as they involve the type of activities that could also be associated with the 2006 Update, such as "HVAC Q1 matrix" discussions or working on "data requests" during the period when TURN was also participating in the 2006 Update workshops as a party and developing its formal comments.

In addition, we are concerned that the hours requested by TURN for Goodson's participation in the PRG/PAG process represent some activities that

²³ R.04-04-025 was closed with the issuance of D.07-09-040.

²⁴ D.06-06-063, mimeo., pp. 12-14.

are beyond the scope of her responsibilities as a PG&E PAG representative. As discussed above, Goodson was selected to represent TURN (in addition to Mitchell) on PG&E's PAG, but was not a representative to the other utility PAGs or any of the PRGs. Mitchell, on the other hand, was selected as TURN's sole representative to the SCE/SoCalGas PAG and served on the PRGs of PG&E and SCE/SoCalGas. However, the description of Goodson's hours include entries such as: "SCE/SCG PRG – review correspondence re: compliance filing and discuss w/CKM," "review SCE PRG compliance phase assessment; email to CKM," "read update re: SCE, SDG&E HVAC program plans," "review and respond to PRG correspondence," "review edits to SCG PRG assessment." In addition, there are entries that suggest that Goodson's time was also spent supervising Mitchell's work, e.g., "review Mitchell's draft sections of SCE/SCG PRG," "review Mitchell work product" and "edit CKM's draft memo to PG&E." We believe that these types of activities are beyond the scope of Goodson's responsibilities as an individual representative to PG&E's PAG, and result in an excessive request for compensable attorney hours.

All things considered, we cannot justify the award amount TURN seeks for its work on the PRG and the PAG. We do not wish to discourage TURN's work in this or any other Commission proceeding and we have generally found TURN's work to be of exceptionally high quality. Moreover, we value TURN's contributions to the energy efficiency portfolios for the period in question, and believe that TURN effectively collaborated with other PRG and PAG members to avoid unnecessary duplication. We nevertheless find TURN's compensation request in this case to be excessive and that it seeks funding for work that is not compensable.

Accordingly, we make the following adjustments to TURN's compensation request: First, we reduce the hours requested for Mitchell by 106 hours and the hours requested by TURN's attorney, Goodson, by 5.75 hours to reflect our determination that none of the hours listed under "EEGA" activities are eligible for compensation. Next, we remove 3.5 hours of work listed for Ms. Mitchell under PAG/PRG statewide activities that we can specifically identify as overlapping with TURN's participation in another proceeding, i.e., the 2006 Update.

Unfortunately, the manner in which TURN has recorded and described the rest of the hours spent by Mitchell and Goodson makes it impossible for us to address our remaining concerns by making deletions to specific "time spent" entries in the timesheets attached to TURN's request. Many of those entries are described too generally for this purpose, e.g., they state that "materials" or "data" were reviewed, meetings or conference calls were held, or "analysis" was performed, but do not describe the purpose or issues addressed by such activities. For some entries, TURN has combined somewhat disjointed activities together, which does not permit us to readily calculate reductions in compensation for some activities, but not others.²⁵ Therefore, we must use our best judgment in adjusting TURN's request further to reflect the additional areas of concern discussed above. In our opinion, based on our overall review and assessment of the timesheets presented in TURN's request, we believe it is

²⁵ For example, the entry under Goodson's timesheet for November 30, 2005 lists 4.25 hours of work for: "PG&E PRG – review LGP correp and discuss w/CKM; SCE/SCG PRG – review correspondence re: compliance filing and discuss w/CKM."

reasonable to reduce the hours requested for Goodson and Mitchell by another 15%, or by 24.25 and 128 hours, respectively.²⁶

5. Reasonableness of Requested Compensation

TURN's \$174,894.17 request for its participation in this proceeding is as follows:²⁷

²⁶ 963.5 total hours claimed for Mitchell minus EEP adjustment of 106 hours claimed in 2004/2005, minus 3.5 hours claimed in 2005 equals: (10-10) 0 hours in 2004, (777.5-(96+3.5)) 678 hours in 2005, and 176 hours in 2006, yields 854 hours. Reducing those hours by 15% yields a total of 576.3 hours in 2005 and 149.6 hours in 2006, for a combined total of 725.9 comparable hours for Mitchell's work.

166 total hours claimed for Goodson (unrelated to preparation of compensation request) minus 5.75 hours claimed in 2005 for EEP equals: (120.25-5.75) 114.5 hours in 2005 and (45.75-0) 45.75 hours in 2006, yields 160.25 hours. Reducing those hours by 15% yields a total of 97.3 hours in 2005 and 38.9 hours in 2006, for a combined total of 136.2 compensable hours.

²⁷ TURN's Request contained a request for compensation of \$173,806.67. This amount was augmented by \$1087.50 in TURN's Supplement, in order to include compensation for the work devoted to preparing that filing by Finklestein.

	Year	Time (hours)	Rate (\$/hour)	Requested Comp
Hayley Goodson	2005	120.25	\$190.00	\$22,847.50
	2006	45.75	\$200.00	\$ 9,150.00
	2006	20*	\$100.00	\$ 2,000.00
Hayley Goodson Subtotal				\$33,997.50
Robert Finkelstein	2006	2*	\$205.00	\$ 410.00
	2007	5*	\$217.50	\$ 1,087.50
Robert Finkelstein Subtotal				\$ 1,497.50
Cynthia K. Mitchell	2004	10	\$115.00	\$ 1,150.00
	2005	777.5	\$140.00	\$108,850.00
	2006	176	\$140.00	\$ 24,640.00
Expenses				\$ 4,727.87
Cynthia Mitchell Subtotal				\$139,367.87
Other Expenses				\$ 31.30
Total				\$174,894.17

* Time spent on compensation request.

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.

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We have already addressed the hours TURN claimed for its work on energy efficiency issues through the PAG/PRG process and have made appropriate adjustments. We do not repeat that discussion here.

5.2. Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. TURN's request for compensation is for work performed by two of its attorneys, Goodson and Finkelstein, and an economist expert, Mitchell. We discuss the requested hourly rates below.

5.2.1. Hourly Rates for 2004 and 2005

For work performed in 2004, TURN seeks an hourly rate of \$115 for Mitchell. For work performed in 2005, TURN seeks an hourly rate of \$140 for Mitchell, and \$190 for Goodson. We previously approved the 2004 and 2005 rates for Mitchell in D.06-02-016, and we adopt these same rates here. The hourly rate of \$190 for Goodson was also previously approved by the Commission in D.06-04-012 and is adopted here.

5.2.2. Hourly Rates for 2006

For 2006 work, TURN seeks an hourly rate of \$200 for Goodson, \$140 for Mitchell, and \$410 for Finkelstein. The \$140 rate requested for Mitchell does not

represent an increase from 2005 and we adopt it here for 2006. The 2006 rates for Goodson and Finkelstein included in TURN's request represent a 4% increase over their 2005 rates.

By D.07-12-026, issued on December 20, 2007 in A.05-12-002, we increased the hourly rates and Finkelstein to \$405 for 2006 work. In D.08-01-033, we adopted the hourly rate of \$200 for Goodson for 2006 work. We use those rates in today's decision.

5.2.3. Hourly Rates for 2007

TURN seeks a rate of \$217.50 for the five hours devoted to preparing the TURN Supplement. This is a reasonable request. We award half the hourly rate for the preparation of compensation requests, and the Commission found \$435 per hour to be reasonable rate for Robert Finkelstein's 2007 work in D.07-12-026 (A.05-12-002).

With the modifications stated above, we find TURN's claim of hourly rates reasonable and adopt them here.

6. 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 asks that we treat this compensation request similar to some of its past requests with regard to the difficulty of establishing specific monetary benefits associated with its participation. TURN claims its contribution to PAGs and PRGs throughout this process was aimed at policy matters which, aside from the \$2 billion forecast of customer net benefits associated with utilities

2006-2008 portfolios, are difficult to quantify in monetary terms. TURN notes this difficulty but observes that the establishment of energy efficiency policies has a direct and lasting impact on customer rates. We agree and have so stated in several Commission orders; however, our concern here is whether TURN's participation specifically has contributed productively to more effective energy efficiency programs. On the basis of the limited information before us, we cannot make that specific finding, although it appears reasonable to assume that TURN's efforts have been productive.

7. Direct Expenses

The itemized direct expenses submitted by TURN include \$4,727.87 for travel, meals, and lodging for Mitchell, and \$31.30 for other miscellaneous costs such as phone calls and fax expenses. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed.

TURN seeks compensation for more than \$4,700 in travel expenses for its consultant, Mitchell, to commute to and from her home in Reno, Nevada. Those expenses include air fare, meals, cab rides and hotels for meetings in San Francisco. It is not reasonable for ratepayers to assume the costs of normal commute to and from an employee's place of business. We are willing to reimburse the expenses of an out-of-town consultant who has special expertise not available locally for work on discrete issues. We have no reason to assume Mitchell has those qualifications or that the work she conducted is so specialized. The costs of commuting are presumed to be covered in the consultant rates we award, just as they would be for any consultant or attorney. We do reimburse travel to and from meetings outside the Bay Area. It is difficult to determine from TURN's filed records which of Mitchell's travel expenses were required for

work outside of the Bay Area so we here reimburse TURN only for those expenses that are clearly associated with meetings in San Diego and Los Angeles. We therefore permit reimbursement of \$649.53 for travel plus \$31.30 for telephone calls. Total reimbursable costs are \$680.83.

8. Award

As set forth in the table below, we award TURN \$132,017.33:

Cost Category	Year	Time (hours)	Rate (\$/hour)	Compensation
Haley Goodson	2005	102.2	\$190.00	\$ 19,418.00
	2006	34	\$200.00	\$ 6,800.00
	2006	20	\$100.00*	\$ 2,000.00
Robert Finkelstein	2006	2	\$202.50*	\$ 405.00
	2007	5	\$217.50*	\$ 1,087.50
Cynthia K. Mitchell	2004	0	0	0
	2005	576.3	\$140.00	\$ 80,682.00
	2006	149.60	\$140.00	\$ 20,944.00
Mitchell's Expenses				\$ 649.53
Other Direct Expenses				\$ 31.30
TOTAL				\$132,017.33

* Time spent on compensation request.

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 August 29, 2006, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SCE, and SoCalGas to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2005 calendar year, to reflect the year in which the proceeding was primarily litigated. Although TURN worked a limited number of hours on statewide PAG and PRG matters, the majority of its work was directed at PG&E

and SCE/SoCalGas energy efficiency portfolios. It is reasonable for these three utilities to share the cost.

Commission staff may audit TURN's records related to the award and TURN 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 rates, fees paid to consultants, and any other costs for which compensation was claimed.

9. 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.

10. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner, and Chief ALJ Angela K. Minkin 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 a substantial contribution to PAGs and PRGs during the compliance and implementation phase of this proceeding, as described herein.
3. TURN's billed hours for most of the EEPP-related work represent work conducted prior to the Commission's authorization of the PAGs and PRGs.
4. Some of the hours submitted by TURN for Mitchell's work as PRG/PAG representative are duplicative of TURN's submission for intervenor compensation in A.05-06-004 *et al.* In addition, there are entries in the

attachments to TURN's request that clearly overlap with TURN's participation as a party in the 2006 Update workshops.

5. Hours requested by TURN for Goodson's participation in the PRG/PAG process include activities that are beyond the scope of her responsibilities as a PG&E PAG representative.

6. TURN's compensation request is excessive and seeks funding for work that is not compensable.

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

8. TURN requested related expenses that are reasonable and commensurate with the work performed except that the Commission does not reimburse the costs of normal commuting to and from the Bay Area.

9. Reasonable compensation for TURN's contributions to the decisions that approve utility energy efficiency portfolios for 2006-2008 is \$132,017.33.

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

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to PAGs and PRGs during the compliance and implementation phase of this proceeding.

2. Section 1801 *et seq.* authorizes the Commission to award intervenor compensation for the work of advocates and expert witnesses. It does not anticipate that intervenors be compensated for conducting what might be

considered the work of utility staff in implementing or administering utility programs.

3. TURN should be awarded \$132,017.33 for its contribution to PAGs and PRGs and subsequent Commission decisions approving utility energy efficiency program portfolios.

4. Because there are no other issues to address in this rulemaking, R.01-08-028 should be closed.

5. 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 \$132,017.33 as compensation for its substantial contributions to the Commission's decision to approve utility energy efficiency portfolios for 2006-2008, as set forth herein.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company shall pay TURN for their respective shares of the award. Each utility's share shall be calculated based on their California-jurisdictional gas and electric revenues for the 2005 calendar year, to reflect the year in which the proceeding was primarily litigated.

3. 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 August 29, 2006, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

4. Rulemaking 01-08-028 is closed.

This order is effective today.

Dated April 10, 2008, 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:	D0804022	Modifies Decision? No
Contribution Decision(s):	D0509043 and related Program Advisory Groups and Peer Review Groups	
Proceeding(s):	R0108028	
Author:	Chief ALJ Angela K. Minkin	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	6/15/2006	\$174,894.17	\$132,017.33	No	Excessive hours, non-compensable work

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Haley	Goodson	Attorney	The Utility Reform Network	\$190	2005	\$190
Haley	Goodson	Attorney	The Utility Reform Network	\$200	2006	\$200
Robert	Finkelstein	Attorney	The Utility Reform Network	\$410 \$435	2006 2007	\$405 \$435
Cynthia K.	Mitchell	Expert	The Utility Reform Network	\$115	2004	\$115
Cynthia K.	Mitchell	Expert	The Utility Reform Network	\$140	2005	\$140
Cynthia K.	Mitchell	Expert	The Utility Reform Network	\$140	2006	\$140

(END OF APPENDIX)