

Decision 08-08-026 August 21, 2008

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

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 08-03-008  
(Filed March 13, 2008)

**DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISIONS (D.) 06-05-025, D.06-08-028 AND D.07-01-018**

This decision awards The Utility Reform Network \$19,024.05 in compensation for its substantial contributions to Decisions (D.) 06-05-025, D.06-08-028 and D.07-01-018. This proceeding is closed.

**1. Background**

The Utility Reform Network (TURN) seeks compensation for its contributions to several Commission orders in the above-captioned rulemaking pertaining to the California Solar Initiative (CSI) and distributed generation (DG) issues. In D.06-05-025, the Commission reduced solar incentive rates to \$2.50 per watt. In D.06-08-028, the Commission adopted performance-based incentives for payments to qualifying solar photo-voltaic (PV) technologies through the CSI, and formed an administrative structure and other features designed to implement the CSI. The Decision established, *inter alia*, the rate at which solar projects receive either performance-based incentives based on actual solar energy production or up-front incentives based on expected performance of the solar installation, an incentive adjustment mechanism, and various other metering and

administrative rules for the CSI. Some of the provisions of D.06-08-028 were subsequently modified in D.06-12-033 to bring it into accord with Senate Bill (SB) 1.

D.07-01-018 resolved a series of issues surrounding the proper allocation of renewable energy credits (RECs) associated with the production of renewable energy from DG facilities, such as solar, wind and fuel cell projects. The Commission determined that RECs are among several factors affecting renewable DG investment decisions and may play a role in the development of renewables in California. The Commission found that renewable DG owners should retain 100% of the RECs associated with their facilities.

TURN actively participated in the proceedings by filing various pleadings leading to all three decisions.

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

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801 - 1812,<sup>1</sup> 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 (NOI) to claim compensation within 30 days of the prehearing conference

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<sup>1</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

- (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), 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 must 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) and 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) and 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).

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

### **3. Procedural Issues**

TURN filed its notice of intent to claim compensation and demonstrated significant financial hardship for participation in the proceeding. On May 16, 2006, Administrative Law Judge (ALJ) Duda issued a ruling finding that TURN 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.

TURN filed its request for compensation for work in this proceeding on May 16, 2008, within 60 days of Rulemaking (R.) 08-03-008, the decision which

closed R.06-03-004 and opened a successor rulemaking. This complies with § 1804(c). TURN's request for compensation is timely.

#### **4. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at 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, we look at if the customer's contentions or recommendations paralleled those of another party, 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.<sup>2</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

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<sup>2</sup> D.98-04-059, 79 CPUC2d 628 at 653.

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 contributions TURN claims it made to the proceeding.<sup>3</sup>

First, TURN filed comments on the March 21, 2006 ruling of ALJ Duda, which led to D.06-05-025. TURN's comments supported a proposed reduction of incentive levels to \$2.50/watt after the first 50 megawatt (MW) of solar were deployed under the CSI. The Commission subsequently adopted this change in D.06-05-025. We agree that TURN made a substantial contribution to that order.

Second, TURN cites several contributions to D.06-08-028.<sup>4</sup> That decision established a system of performance-based incentives for payment to qualifying solar technologies. TURN supported adoption of performance-based incentives, initially, for larger solar energy systems and the subsequent extension of such incentives for smaller systems. TURN notes that the Commission subsequently adopted a system cutoff within the range that TURN had proposed, and approvingly cited TURN's analysis concerning system performance degradation when concluding not to cap performance incentives for high-performing systems.

Further, TURN argues that the Commission specifically cited its reasoning in modifying the staff proposal to adopt a "volume trigger" for incentive levels. The Commission also noted its reliance on information provided by TURN in making the decision to include geographic location in the methodology for

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<sup>3</sup> TURN's compensation request notes that TURN performed work on SB 1 which was directly related to R.06-03-004, but it seeks no compensation for these hours.

<sup>4</sup> In D.06-12-033, the Commission modified some provisions of D.06-08-028 in accordance with SB 1.

calculating Expected Performance Based Buydown (EPBB) incentives. The Commission included findings of facts and conclusions of law based on a recommendation TURN provided that photovoltaic systems oriented between 180 and 270 degrees receive equivalent design factor ratings. Moreover, TURN claims to have provided compelling evidence showing it was appropriate to segment the market by customer class and service territory, before assigning distinct MW triggers, funding levels, and cost allocations to each segment. Despite the additional administrative complexity inherent in TURN's scheme, the Commission agreed with TURN that this segmentation allowed for more independent and appropriate market responses.

Third, TURN claims it contributed to D.07-01-018, even though it notes that the Commission ultimately rejected TURN's legal analysis that a net metering tariff for solar and wind was predicated on the transfer of the renewable attributes to the utility. TURN had argued that RECs should be allocated to the utilities to protect ratepayers from subsidizing renewable DG twice. The Commission found the record was inadequate to estimate the current or future value of the REC. The Commission, however, agreed with TURN that CSI subsidies may need to be adjusted in the future to account for the potential value of the REC not presently included in the calculation of CSI incentive levels. Although the Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope, TURN voluntarily discounted 50% of the time spent on this issue

because the Commission rejected TURN's primary recommendation and analysis.<sup>5</sup>

We agree that TURN's involvement in the above proceedings was extensive and constituted a substantial contribution involving broad and complex issues. Although as TURN acknowledges, it was unsuccessful on at least one issue it presented, the decisions strongly reflect TURN's advocacy. We find that TURN's contributions to the decisions, cited above, were substantial. Not only did the Commission approve of several of TURN's positions in its decisions, but in several instances it specifically approved of TURN's reasoning and relied on it in rendering the above decisions.

We further find that TURN's contributions were not unnecessarily duplicative of the showings of other parties. Despite the number of participating parties, we agree with TURN that it provided unique recommendations, it did not extensively reargue positions previously adopted by other parties, and it produced original analysis and recommendations on a number of issues at the proceedings. In particular, TURN cites its recommendations and analyses on volume-based incentive adjustment triggers, different triggers for different service territories, and the impact of geographic location on the EPBB design factor as being fairly unique among the parties involved.

We find that this participation satisfies ALJ Duda's request that intervenors minimize duplication and demonstrate "unique presentation of facts or arguments that were relied upon" by the ALJ or Commission to qualify for

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<sup>5</sup> D.98-04-028, 79 CPUC2d 570, 573-574.

compensation. Therefore, we find that TURN provided substantial contributions to D.06-05-025, D.06-08-028, and D.07-01-018.

**5. Reasonableness of Requested Compensation**

TURN requests \$19,024.05<sup>6</sup> for its participation in these proceedings, as follows:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
	<b>r</b>			
Hayley Goodson	2006	1.75	\$195.00	\$341.25
Matthew Freedman	2007	3.50	\$300.00	\$1,050.00
Matthew Freedman	2006	32.88	\$280.00	\$9,206.40
<b>Attorney/Staff subtotal</b>				<b>\$10,597.65</b>
<b>Consultant</b>				
Sarah Truitt	2006	57.00	\$110.00	\$6,270.00
<b>Total Consulting Fees</b>				<b>\$6,270.00</b>
<b>Preparation of NOI and Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Matthew Freedman	2006	1.50	\$140.00	\$210.00
Marcel Hawiger	2008	12.00	\$150.00	\$1,800.00
<b>*Subtotal Hourly Compensation:</b>				<b>\$18,877.65</b>
<b>Expenses</b>				<b>\$146.40</b>
<b>Total Requested Compensation</b>				<b>\$19,024.05</b>

\* Intervenor compensation matters subtotal: \$2,010.00.

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<sup>6</sup> TURN’s filing contains a math error. It claims it is seeking \$19,022.65, but our calculation indicates the total should be \$19,024.05.

### **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 breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total attorneys' hours. It also reasonably supports the claim for total consulting time and fees. Particularly in lieu of the nature and quality of the contribution provided by TURN, and their significant discounting of their own efforts, we find these hours claimed to be reasonable.

### **5.2. Intervenor 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 seeks an hourly rate of \$280 for Matthew Freedman, for work performed in 2006. We previously approved this rate for Freedman in D.06-10-018, and adopt it here. TURN additionally seeks an hourly rate of \$300 for Freedman for work performed in 2007. Again, we previously approved this rate for Freedman in D.07-12-026, and adopt it here.

TURN seeks an hourly rate of \$300 for Marcel Hawiger, for work performed in 2008. We previously approved this rate for Hawiger in D.08-06-044, and adopt it here. Hawiger's work in 2008 involved 12 hours of work preparing the compensation request. Therefore, we will award Hawiger for 12 hours at half his pay rate, according to our established practice.

TURN seeks an hourly rate of \$195 for Hayley Goodson, for work performed in 2006. We previously approved this rate for Goodson in D.07-12-026, and adopt it here.

Indeed, the only individual whose hourly rate we have not previously approved and for whom TURN seeks compensation is consultant Sarah Truitt,<sup>7</sup> for work performed in 2006. In evaluating the proper hourly rate, we look to the experience of a particular expert, relevant market rate data, and the rates awarded to peers practicing before the Commission.

Consultant Truitt has a M.B.A. granted in May 2008 and a B.A. in Advertising with a concentration in marketing granted in 1997. Prior to consulting with TURN on these proceedings, Truitt had worked as a solar energy sales consultant in the Bay Area regarding the installation of photovoltaic and solar thermal systems up to 129 kW in size. While Truitt does not qualify as an expert on all energy or solar issues, we agree with TURN that her education and experience qualified her as an expert concerning the specific issues of incentive structure which were in dispute in D.06-08-028. TURN seeks an hourly rate of \$110 for Truitt's work in 2006, which is comparable with the hourly rates adopted in D.07-12-007 for work performed by Juliette Anthony representing Californians for Renewable Energy in this same proceeding. In addition, TURN states that the rate sought is the actual rate billed that Truitt billed to TURN, and this rate is below the floor level of \$115/hour adopted by the Commission for experts in 2006.<sup>8</sup> Given these factors, we find that \$110/hour is a reasonable rate

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<sup>7</sup> Ms. Truitt's work, for which compensation is sought, is recorded under her previous surname of Tuntland. (TURN's Request for Compensation, fn. 18.)

<sup>8</sup> D.07-01-009, *mimeo.*, p. 8.

for Ms. Truitt's services in this proceeding based on the nature of her work, market rates, and the rates awarded to other experts appearing before the Commission during this proceeding.

### 5.3. Direct Expenses

The itemized direct expenses submitted by TURN include the following:

Printing & Photocopying	\$146.40
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The cost breakdown included with the request shows these expenses to be commensurate with the work performed. We find these costs reasonable.

### 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 its participation. This showing assists us in determining the overall reasonableness of the request.

TURN states that it is not possible to quantify a specific financial impact of their participation in the proceeding consumers. However, TURN claims that it addressed issues related to the potential success of a multi-billion dollar CSI program, and that it was a productive contributor to this proceeding. We agree that to the extent that CSI succeeds, ratepayers benefit monetarily by receiving the many benefits provided by solar energy while avoiding excessive energy costs. We also agree that TURN contributed materially to the CSI through its participation in the proceedings. While TURN's specific contributions to the implementation of CSI are difficult to quantify, they are substantial and we find that such contributions justify the compensation requested by TURN. Thus, we find that TURN's efforts in this case have been productive.

**7. Award**

As set forth in the table below, we award \$19,024.05:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
	<b>r</b>			
Hayley Goodson	2006	1.75	\$195.00	\$341.25
Matthew Freedman	2007	3.50	\$300.00	\$1,050.00
	2006	32.88	\$280.00	\$9,206.40
<b>Work on Proceeding Total:</b>				<b>\$10,597.65</b>
<b>Consultant</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
	<b>r</b>			
Sarah Tuntland	2006	57.00	110.00	\$6,270.00
<b>Preparation of NOI and Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Matthew Freedman	2006	1.50	\$140.00	\$210.00
Marcel Hawiger	2008	12.00	\$150.00	\$1,800.00

**CALCULATION OF FINAL AWARD**

Work on Proceeding	\$10,597.65
Consultant	\$6,270.00
NOI and Compensation Request Preparation	\$2,010.00
Expenses	\$146.40
<b>TOTAL AWARD</b>	<b>\$19,024.05</b>

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 July 30, 2008, the 75<sup>th</sup> day after TURN filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SDG&E and SCE to allocate payment responsibility amongst themselves based upon their California-jurisdictional electric revenues for the 2007 calendar year.

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 rates, 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 the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

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

Michael R. Peevey is the assigned Commissioner, and Dorothy Duda and Maryam Ebke are the assigned ALJs 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.06-05-025, D.06-08-028 and D.07-01-018 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 \$19,024.05.

6. The Appendix to this decision 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 expenses, incurred in making substantial contributions to D.06-05-025, D.06-08-028 and D.07-01-018.

2. TURN should be awarded \$19,024.05 for its contributions to D.06-05-025, D.06-08-028 and D.07-01-018.

3. 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 \$19,024.05 as compensation for its substantial contributions to Decision (D.) 06-05-025, D.06-08-028 and D.07-01-018.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall pay TURN the award granted herein. PG&E, SDG&E, and SCE shall allocate payment responsibility based on their California-jurisdictional electric revenues for the 2007 calendar year. 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 July 30, 2008, the 75<sup>th</sup> day after TURN's compensation request was filed, as indicated below, and continuing until full payment is made.

This order is effective today.

Dated August 21, 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**

<b>Compensation Decision:</b>	D0808026	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0605025, D0608028 and D0701018	
<b>Proceeding(s):</b>	R0803008	
<b>Author:</b>	ALJ Duda and ALJ Ebke	
<b>Payer(s):</b>	Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	5/16/08	\$19,022.65	\$19,024.05	No	Math error

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	TURN	\$300.00	2008	\$300.00
Hayley	Goodson	Attorney	TURN	\$195.00	2006	\$195.00
Matthew	Freedman	Attorney	TURN	\$300.00	2007	\$300.00
Matthew	Freedman	Attorney	TURN	\$280.00	2006	\$280.00
Sarah	Truitt	Expert Witness	TURN	\$110.00	2006	\$110.00

**(END OF APPENDIX)**