

Decision 08-09-037 September 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK AND THE UTILITY CONSUMERS' ACTION NETWORK FOR AWARD OF COMPENSATION FOR SUBSTANTIAL CONTRIBUTION TO DECISION (D.) 04-06-011, D.05-06-062, D.06-02-031, AND D.06-09-021

This decision awards The Utility Reform Network (TURN) and The Utility Consumers Action Network (UCAN), jointly, \$315,896.16 in compensation for their substantial contributions to Decision (D.) 04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021. This represents a slight decrease from the amount requested due to ineligible expenses claimed by UCAN/TURN. Today's award payment will be paid by San Diego Gas & Electric Company. This proceeding is closed.

1. Background

This request covers the time devoted by TURN/UCAN staff and consultants to litigation associated with a series of decisions involving generating resources (particularly Calpine's Otay Mesa) selected by San Diego Gas & Electric Company (SDG&E) as part of its 2003 Grid Reliability solicitation. TURN/UCAN participated in the original review and approval of the contracts submitted in SDG&E's October 7, 2003 motion. After hearings and briefing on the motion, the Commission considered the Proposed Decision of Administrative

Law Judge (ALJ) Brown and two Alternate Decisions from Commissioners Wood and Peevey. After the issuance of D.04-06-011 approving SDG&E's motion, TURN/UCAN filed a joint application for rehearing on issues relating to the approval of Calpine's Otay Mesa generating plant. Based on this application for rehearing, the Commission granted limited rehearing in D.05-06-062 for purposes of determining the reasonableness of the Otay Mesa Power Purchase Agreement (PPA). Following the decision, the Commission initiated another set of evidentiary hearings which led to the issuance of D.06-02-013 approving the Otay Mesa PPA. Subsequent to this decision, TURN/UCAN filed another application for rehearing. In tandem with the filing of this compensation request, TURN/UCAN notified the Commission of the withdrawal of their application for rehearing of D.06-02-013. Prior to the Commission action on that application for rehearing, TURN/UCAN reached a compromise agreement with SDG&E that led to the submission of a joint petition for modification of D.04-06-011 and D.06-02-031. The joint petition was approved in D.06-09-021.

2. 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 All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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), 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).) An intervenor who has made a "substantial contribution" may also, in certain circumstances, receive a compensation award for fees and costs incurred in "obtaining judicial review." (§ 1802(a); *Southern California Edison Co. v. PUC*, 2004 Cal. App. LEXIS 568, affirming D.02-06-070 and D.03-04-034.)
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).

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding initiated until 30 days after the

PHC is held. (Rule 17.1(a) (1).) The PHC in this matter was held on January 8, 2002. TURN timely filed its NOI on February 5, 2002. UCAN filed its NOI timely on August 8, 2005 in a subsequent prehearing conference held on July 22, 2005.

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. In this case, TURN asserted it is a customer as defined in § 1802(b)(1). In its NOI, TURN also asserted financial hardship.

On May 28, 2002, ALJ Walwyn ruled that TURN is a customer, pursuant to §1802(b)(1)(C) and meets the requirements for financial hardship, pursuant to §1804(a)(2)(B). On June 28, 2005, ALJ Long ruled that UCAN is a customer, pursuant to §1802(b)(1)(C) and meets the requirements for financial hardship, pursuant to §1804 (a)(2)(B). TURN/UCAN filed a joint request for compensation on November 7, 2006, within 60 days of D.06-09-021. No party opposed the request. In view of all of the above, we find that TURN/UCAN has satisfied all the procedural requirements necessary to make its request for compensation.

3. 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.²

With this guidance in mind, we turn to the claimed contributions TURN/UCAN made to the proceeding. Their specific contributions are explained below.

TURN/UCAN set forth with specificity the contributions they made to D.04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021. The request for compensation adequately chronicles the work and contributions they made to each decision, resulting in a final decision on the contract for the Otay Mesa facility that is far superior for SDG&E ratepayers than the contract approved in the earlier Commission decisions. TURN/UCAN made a commitment to ensuring that the SDG&E ratepayers received the best facility at the best price, resulting in the most advantageous ownership form, and made a broad variety of substantial contributions leading to these results. Parties are asked to refer to the

² D.98-04-059, 79 CPUC2d 628 at 653.

TURN/UCAN request for compensation to review the entire litany of substantial contributions.

For purposes of granting compensation, TURN/UCAN have met their burden of showing the substantial contributions to each of the four decisions, complete with references to specific language in the decisions that reflect the TURN/UCAN input. D.04-06-011 was the first decision involving the Otay Mesa power plant and that proposed decision did not reflect the modifications urged by TURN/UCAN. However, the final decisions approved by the Commission did include some of the modifications urged by TURN/UCAN. The final decision included the following provisions proffered by TURN/UCAN:

1. SDG&E's request to have certain conditions precedent tied into the Otay Mesa contract was rejected;
2. Stranded cost protection for bundled service customers;
3. The Converge contract was modified to include a residential customer Segment;
4. SDG&E's request for increased return on equity for new utility-owned generation projects was rejected for consideration in this proceeding;
5. SDG&E's request for a heat rate incentive mechanism for Palomar was modified to reflect the TURN/UCAN proposal to adjust the benchmarks over time based on capital additions or betterment;
6. SEMPRA utilities (Southern California Edison Company and San Diego Gas & Electric Company) were urged to engage in a voluntary renegotiation of Department of Water Resources contracts, in exchange for approval of Palomar;
8. Discussion on whether Otay Mesa was "needed" prior to 2010 was reflected in the final decision; and
9. A 53 Megawatt Celerity Energy, Inc. demand response proposal was approved as part of the final decision.

Contribution to D.05-06-062

Following the issuance of D.04-06-011, TURN/UCAN filed an application for rehearing, and the Commission granted rehearing based on the arguments in the TURN/UCAN application.

Contribution to D.06-02-031

After rehearing was granted, the Commission conducted another review of the Otay Mesa PPA to determine its reasonableness as a bilateral contract. Again, TURN/UCAN participated actively throughout the proceeding, and although D.06-02-031 again approved the Otay Mesa PPA, the decision recognized the validity of the concerns raised by TURN/UCAN.

Contribution to D.06-09-021

TURN/UCAN filed an application for rehearing of D.06-02-031. SDG&E worked with TURN/UCAN and the Division of Ratepayer Advocates (DRA) to renegotiate a deal with Calpine for Otay Mesa that was acceptable to the ratepayer groups. A revised PPA was crafted and presented to the Commission for approval. TURN/UCAN worked with SDG&E to achieve an acceptable outcome which was reflected in the final decision on Otay Mesa, D.06-09-021.

Summary

In summary, TURN/UCAN were instrumental throughout all four project was the result of the substantial contributions of these intervenors. As a result of these comprehensive impacts on this phase of the proceeding, the Commission finds that TURN/UCAN made a substantial contribution on all issues it addressed. As a result, the Commission finds that the participation was beneficial and productive on behalf of ratepayers.

4. 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.

TURN specifically partnered with UCAN to avoid any duplication and combined resources to jointly litigate this application. The hourly summaries demonstrate that TURN staff performed the vast majority of the work in litigating on behalf of both organizations. Duplication is not an issue due to the manner in which TURN coordinated testimony, responses to SDG&E motions, case management activities, and hearing participation with DRA. The compensation request for TURN/UCAN in this proceeding should not be reduced for duplication of the showings of other parties.

Regarding contributions by other parties, we agree with TURN/UCAN that in a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. TURN states that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other very active party in this proceeding, DRA. (§ 1802.5.) TURN states that it collaborated closely with DRA throughout this proceeding.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation request is reasonable.

5. Reasonableness of Requested Compensation

TURN/UCAN requests \$315,983.84 for its participation in this proceeding, as follows:

Attorney/Staff	Work on Proceeding		Hourly Rate	Total
	Year	Hours		
Robert Finkelstein	2004	16.75	\$395	\$6,616
Robert Finkelstein	2005	1.25	\$395	\$494
Robert Finkelstein	2006	2.0	\$410	\$820 ³
Michel Florio	2003	5.0	\$435	\$2,175
Michel Florio	2004	35.0	\$470	\$16,450
Michel Florio	2005	8.75	\$470	\$4,112.50
Michel Florio	2006	26.75	\$480	\$12,840
Marcel Hawiger	2003	1.5	\$250	\$375
Marcel Hawiger	2004	12	\$270	\$3,240
Matthew Freedman	2003	15.75	\$250	\$3,938
Matthew Freedman	2004	254	\$270	\$68,580
Matthew Freedman	2005	148.75	\$270	\$40,163
Matthew Freedman	2006	58.75	\$280	\$16,450
Daniel Edington	2003	3.2	\$190	\$608
Michael Shames	2004	17.6	\$250	\$4,400
Michael Shames	2005	48.55	\$250	\$12,138
Michael Shames	2006	20.4	\$260	\$5,304
Consultants				
Melanie Tomavov (paralegal)	2004	57.0	\$100	\$5,700
Kevin Woodruff	2003	71.5	\$200	\$14,300
Kevin Woodruff	2004	186.5	\$200	\$37,300
Kevin Woodruff	2005	173.5	\$200	\$34,700
Kevin Woodruff	2006	62.5	\$225	\$14,062.50
Jeff Nahigian	2004	1.5	\$140	\$210
William Marcus	2004	23.41	\$195	\$4,564.95
William Marcus	2005	.75	\$210	\$157.50
Subtotal Hourly Compensation				\$309,695.95

³ Approved hourly amount reduced to \$405.00, previously adopted by the Commission in D.06-10-018.

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Finkelstein	2006	1	\$197.50	\$198
Matthew Freedman	2005	.5	\$135	\$68
Matthew Freedman	2006	29	\$140	\$4,060
Subtotal Hourly Compensation				\$4,326
Total Hourly Compensation				\$314,021.95
Expenses				\$1,961.89
Total Requested Compensation				\$315,983.84

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

TURN/UCAN have documented their claimed hours by presenting a breakdown of the hours its attorney’s and consultants worked on these proceedings, along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

5.2. Intervenor Hourly Rates

Except for the 2006 rate request for Robert Finkelstein, all other hourly rates for the attorney’s listed were previously approved by the Commission and are adopted here. TURN/UCAN’s requested 2006 rate for Robert Finkelstein was reduced to \$405, as this rate was previously adopted in D.06-10-018. TURN/UCAN’s request for compensation for Melanie Tomavov (summer law clerk/paralegal) is consistent with paralegal average rates previously adopted by the Commission for 2004.

5.3. Direct Expenses

The itemized direct expenses submitted by TURN/UCAN include the following:

Litigation Support/Research	\$328.00
Printing & Photocopying	\$360.40
Postage & Delivery	\$30.84
Telephone & Fax	\$16.86
Travel/Parking/Lodging	\$1,225.79 ⁴
Total Expenses	\$1,961.89

With the exception of the costs for meals, the cost breakdown included with the request shows miscellaneous expenses to be commensurate with the work performed. Consistent with past Commission decisions, we do not compensate for meals.⁵ Expert’s travel expenses do not relate to routine commuting and should be compensated.

6. Productivity

Because of TURN/UCAN’s participation, the Commission rejected SDG&E’s proposed debt equivalence adder, denied SDG&E’s request for an enhanced rate of return on generation assets, approved stranded cost charges for departing loads, and modified the Converge contract to allocate less of the risk of nonperformance to ratepayers. Although it is difficult in proceedings such as this one to achieve a specific estimate of the benefits of an intervenor’s participation, all of these outcomes will provide concrete monetary benefits to

⁴ Final award reduces this amount by \$78.68 to disallow for meals.

⁵ D.07-08-021, p. 8.

ratepayers which will substantially outweigh the cost of TURN/UCAN's participation.

7. Award

As set forth in the table below, we award TURN/UCAN \$315,896.16:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Finkelstein	2004	16.75	\$395	\$ 6,616
Robert Finkelstein	2005	1.25	\$395	\$ 494
Robert Finkelstein	2006	2.0	\$405	\$ 810 ⁶
Michel Florio	2003	5.0	\$435	\$ 2,175
Michel Florio	2004	35.0	\$470	\$16,450
Michel Florio	2005	8.75	\$470	\$ 4,112.50
Michel Florio	2006	26.75	\$480	\$12,840
Marcel Hawiger	2003	1.5	\$250	\$ 375
Marcel Hawiger	2004	12	\$270	\$ 3,240
Matthew Freedman	2003	15.75	\$250	\$ 3,938
Matthew Freedman	2004	254	\$270	\$ 68,580
Matthew Freedman	2005	148.75	\$270	\$ 40,163
Matthew Freedman	2006	58.75	\$280	\$ 16,450
Daniel Edington	2003	3.2	\$190	\$ 608
Michael Shames	2004	17.6	\$250	\$ 4,400
Michael Shames	2005	48.55	\$250	\$12,138
Michael Shames	2006	20.4	\$260	\$ 5,304
Consultants				
Melanie Tomavov (paralegal)	2004	57.0	\$100	\$ 5,700
Kevin Woodruff	2003	71.5	\$200	\$14,300
Kevin Woodruff	2004	186.5	\$200	\$37,300
Kevin Woodruff	2005	173.5	\$200	\$34,700
Kevin Woodruff	2006	62.5	\$225	\$14,062.50
Jeff Nahigian	2004	1.5	\$140	\$210
William Marcus	2004	23.41	\$195	\$4,564.95
William Marcus	2005	.75	\$210	\$157.50

⁶ 2006 rate of \$405 adopted in D.06-10-018.

Subtotal Hourly Compensation **\$309,685.95**

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Finkelstein	2006	1	\$197.50	\$ 198
Matthew Freedman	2005	.5	\$135	\$ 68
Matthew Freedman	2006	29	\$140	\$ 4,060
Subtotal Hourly Compensation				\$ 4,326

CALCULATION OF FINAL AWARD

Work on Proceeding	\$309,685.95
NOI and Compensation Request Preparation	\$ 4,326.00
Expenses	\$ 1,883.21
TOTAL AWARD	\$315,896.16

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 January 10, 2007, the 75th day after TURN/UCAN filed its compensation request, and continuing until full payment of the award is made.

This award is to be paid for by SDG&E. 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/UCAN'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 Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN/UCAN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN/UCAN made substantial contributions to D.04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021 as described herein.
3. TURN/UCAN requested hourly rates for its representatives (as adjusted herein), that are reasonable when compared to the market rates for persons with similar training and experience.
4. TURN/UCAN requested related expenses (as adjusted herein) that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$315,896.16.
6. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. TURN/UCAN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021.
2. TURN/UCAN should be awarded \$315,896.16 for its contribution to D.04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021.

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

4. Rulemaking 01-10-024 is closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network and The Utility Consumers' Action Network (TURN/UCAN) is awarded \$315,896.16 as compensation for its substantial contributions to Decision (D.) 04-06-011, D.05-06-062, D.06-02-031 and D.06-09-021.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay TURN/UCAN 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 January 21, 2007, the 75th day after the filing date of TURN/UCAN's request for compensation, and continuing until full payment is made.

3. Rulemaking 01-10-024 is closed.

This order is effective today.

Dated September 18, 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:	D0809037	Modifies Decision? No
Contribution Decision(s):	D0406011, D0506062, D0602031 and D0609021	
Proceeding(s):	R0110024	
Author:	ALJ Brown	
Payer(s):	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network and The Utility Consumers Action Network	11-07-06	\$315,983.84	\$315,896.16	No	decrease in hourly rate; inappropriately claimed expense

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	\$395	2004	\$395
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2005	\$395
Robert	Finkelstein	Attorney	The Utility Reform Network	\$410	2006	\$405
Michel	Florio	Attorney	The Utility Reform Network	\$435	2003	\$435
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470
Michel	Florio	Attorney	The Utility Reform Network	\$480	2006	\$480
Marcel	Hawiger	Attorney	The Utility Reform Network	\$250	2003	\$250
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2004	\$270
Matthew	Freedman	Attorney	The Utility Reform Network	\$250	2003	\$250
Matthew	Freedman	Attorney	The Utility Reform Network	\$280	2006	\$280
Daniel	Edington	Attorney	The Utility Reform Network	\$190	2003	\$190
Michael	Shames	Attorney	The Utility Consumers Action Network	\$250	2004	\$250
Michael	Shames	Attorney	The Utility Consumers Action Network	\$260	2006	260
Melanie	Tomavov	Paralegal	The Utility Reform Network	\$100	2004	100
Kevin	Woodruff	Expert	The Utility Reform Network	\$200	2003	200
Kevin	Woodruff	Expert	The Utility Reform Network	\$200	2004	200
Kevin	Woodruff	Expert	The Utility Reform Network	\$200	2005	200
Kevin	Woodruff	Expert	The Utility Reform Network	\$225	2006	225
Jeff	Nahigian	Expert	The Utility Reform Network	\$140	2004	140
William	Marcus	Expert	The Utility Reform Network	\$195	2004	195
William	Marcus	Expert	The Utility Reform Network	\$210	2005	210

(END OF APPENDIX)