

Decision 08-11-055 November 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Condition, the Suspension of DA May Be Lifted Consistent with Assembly Bill IX and Decision 01-09-060.

Rulemaking 07-05-025
(Filed May 24, 2007)

DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-02-033

This decision awards The Utility Reform Network (TURN) \$24,185.00 in compensation for its substantial contributions to Decision (D.) 08-02-033.

Today's award payment will be paid on a pro-rated basis by the three investor-owned utilities (IOUs), Pacific Gas and Electric Company (PG&E), Southern Californian Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E). This proceeding remains open for Phase II of this proceeding.

1. Background

The Commission initiated this proceeding as a result of the Petition for Rulemaking (P.) 06-12-002 filed on December 6, 2006 by Alliance for Retail Energy Markets (ARem), et al. In Phase I of this rulemaking, we determined if the Commission has discretionary authority under applicable statutes to lift the suspension of Direct Access (DA) for retail electric service. The option for retail customers to purchase electricity on a DA basis is currently suspended.

D.08-02-033 resolving Phase I issues, concluded that under the applicable statutory provisions, the Commission does not have the authority to lift the suspension at present. D.08-02-033 further determined that Phase II of this proceeding will move forward, however, as a forum for considering the appropriate conditions and market framework within which the suspension could be lifted at a future date, and any renewed DA program may ultimately be implemented.

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. 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).)

¹ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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.

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 where it is preliminarily determined that no hearing is needed, the intervenor must file its NOI between the start of the proceeding until 30 days after the time for filing responsive pleadings, *e.g.*, protests, responses, answers, or comments. (Rule 17.1(a)(2).) The Order Instituting Rulemaking (OIR) initiating this proceeding preliminarily determined that hearings were unnecessary (OIR, Ordering Paragraph (OP) 9, p. 44). Comments on procedural issues of the OIR were due 30 calendar days after the issuance of the OIR (OIR, OP 8, p. 44). The OIR was mailed on May 30, 2008, therefore TURN’s NOI filed on June 25, 2007, was timely.

In its NOI, TURN asserted financial hardship. On August 17, 2007, the ALJ ruled that TURN meets the financial hardship condition pursuant to § 1804(b)(1) based on the rebuttable presumption of TURN's eligibility made in a ruling of November 15, 2006 issued in Investigation 06-06-014. The rebuttable presumption of financial hardship from that ruling applies in this instance because this proceeding commenced within one year of the date of that finding.

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 who is authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) The August 17, 2007 ruling found TURN a customer pursuant to §1802(b)(1)(C).

Regarding the timeliness of the request for compensation, TURN filed its request for compensation on April 29, 2008, within 60 days of D.08-02-033 being issued. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that TURN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated

or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 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 TURN's claimed contributions. The primary issue in Phase 1 of this proceeding was the legal question of this Commission's authority under current law to lift the suspension of DA. While a number of parties asserted that the Commission possessed such authority under one theory or another, TURN (sometimes filing as part of a coalition of parties and sometimes only on its own behalf) maintained that such action would be unlawful. TURN addressed this issue in comments and briefs, beginning with the joint response, filed January 5, 2007, to P.06-12-002, submitted by the Alliance for Retail Energy Markets (AREM),³ and continuing through the separate reply comments on the Proposed Decision of Commissioner Peevey, filed January 7, 2008 in this docket.

² D.98-04-059, 79 CPUC2d 628 at 653.

³ D.08-02-033 notes on page 6, that the comments filed in response to the AREM petition were considered as part of the record for this decision, along with those filed in the OIR itself.

We acknowledge that TURN's comments and legal arguments were utilized by the Commission, as indicated by the many citations to TURN's positions at pp 8, 15-16, 24-25, and 30 of D.08-02-033. D.08-02-033 adopted TURN's position on the most fundamental issue in Phase 1, namely that the Commission cannot currently lift the suspension on DA because DWR supplies power under the provisions of AB 1X by virtue of owning the power dispatched under DWR contracts and selling it to retail customers.

We therefore find that TURN's participation made a substantial contribution to the resolution of the primary issue in Phase 1 of this proceeding as evidenced by the conclusions reached regarding the DA suspension in D.08-02-033. Accordingly, the Commission awards TURN compensation for all reasonable costs incurred, pursuant to Section 1802(i).

4. Avoiding Duplication with Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding.

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 active parties in this proceeding. TURN argues that in most cases, it prepared the first draft of comments or briefs, even if the documents were submitted on behalf of a number of different parties. In other cases TURN submitted documents solely on its own, typically when time did not permit the assembling of parties for a joint submission. TURN states that it is clear from the record that they were the primary advocates on this issue and if there was any duplication that occurred, it consisted of others duplicating TURN's work and not the reverse.

We affirm TURN's claim that they worked on this proceeding in a manner that avoided duplicating the work of other participants.

5. Reasonableness of Requested Compensation

TURN requests \$24,185 for its participation in this proceeding, consisting of attorney's fees and miscellaneous expenses, itemized as follows:

	Proceeding			
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel Florio	2006	4.50	\$485.00	\$ 2,182.50
Michel Florio	2007	19.50	\$520.00	\$10,140.00
Michel Florio	2008	2.25	\$535.00	\$ 1,203.75
Matthew Freedman	2007	31.75	\$300.00	\$ 9,525.00
Subtotal Hourly Compensation:				\$23,051.25
Preparation of NOI and Compensation Request and Miscellaneous Expense				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel Florio	2008	3.75	\$267.50	\$ 1,003.13
Matthew Freedman	2007	.75	\$150.00	\$ 112.50
Subtotal Hourly Compensation:				\$ 1,115.63
Miscellaneous Expenses				\$ 18.80
Total Requested Compensation:				\$24,185.00⁴

In general, in order to justify an award, 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 the reasonableness of TURN's claimed costs are discussed below.

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

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by

⁴ Figures rounded to nearest dollar.

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

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. We conclude that the total hours claimed is reasonable in relation to the scope of TURN's contributions to D.08-02-033. Since virtually all of TURN's work in Phase I revolved around the legal issue of the Commission's authority to lift the DA suspension, we agree that an allocation of time by separate issues does not appear feasible, and we will not require it here. The daily breakdown of work tasks reasonably supports the claim for total hours.

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 requests hourly rates for its attorneys which have been previously adopted as reasonable for purposes of awarding intervenor compensation in other proceedings as follows:

Attorney	Year	Hourly Rate	Basis for Justification
Michel Florio	2006	\$485.00	D.06-11-032
Michel Florio	2007	\$520.00	D.08-03-012
Michel Florio	2008	\$535.00	D.08-07-043
Matthew Freedman	2007	\$300.00	D.07-10-012

We conclude that TURN's requested hourly rates for Florio and Freedman are reasonable for purposes of computing an award of compensation in this proceeding since the same hourly rates were previously approved for each of them in other proceedings for work performed in 2006-20008 respectively, as referenced above.

5.3. Direct Expenses

The itemized direct expenses submitted by TURN include the following:

Printing & Photocopying	\$18.80
Total Expenses	\$18.80

The cost breakdown included with the request shows the miscellaneous 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. (D.98-04-059, pp. 34-35.) In a proceeding like this one, it is impossible to establish a specific dollar amount of savings resulting from TURN’s work because the issues were purely legal in nature. TURN argues however that the ratepayers clearly benefit when the Commissions actions are consistent with the laws that govern such matters.

We affirm this argument and agree that TURN’s efforts were productive from a ratepayers’ perspective.

7. Award

As set forth in the table below, and consistent with the discussion above, we award TURN the full amount that it has requested, namely \$24,185:

Attorney/Staff	Work on Proceeding			Total
	Year	Hours	Hourly Rate	
Michel Florio	2006	4.50	\$485.00	\$ 2,182.50
Michel Florio	2007	19.50	\$520.00	\$10,140.00
Michel Florio	2008	2.25	\$535.00	\$ 1,203.75
Matthew Freedman	2007	31.75	\$300.00	\$ 9,525.00
Hourly Compensation:				\$23,051.25

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel Florio	2008	3.75	\$267.50	\$ 1,003.13
Matthew Freedman	2007	.75	\$150.00	\$ 112.50
Subtotal Hourly Compensation:				\$ 1,115.63
Expenses				\$ 18.80
Total Requested Compensation				\$24,185.00⁵

CALCULATION OF FINAL AWARD

Work on Proceeding	\$23,051.25
NOI and Compensation Request Preparation	\$ 1,115.63
Miscellaneous Expenses	\$ 18.80
Total Approved Compensation Award	\$24,185.00

Pursuant to § 1807, we order the IOUs, PG&E, SCE, and SDG&E, to pay this award. Each IOU shall pay its pro-rated share in proportion to its percentage share of California-jurisdictional electric revenue for calendar year 2007. 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 12, 2008, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

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. The records pertaining to an award of

⁵ Figures rounded to nearest dollar.

compensation shall be retained for at least three years from the date of the final decision making the award.

8. 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.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.08-02-033 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 \$24,185.
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.08-02-033.
2. TURN should be awarded \$24,185 for its contribution to D.08-02-033.

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 is awarded \$24,185 as compensation for its substantial contributions to Decision 08-02-033.

2. Within 30 days of the effective date of this decision, the investor-owned utilities, Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas and Electric Company shall pay The Utility Reform Network a pro-rated share of the total award of \$24,185. The proration shall be computed based upon each IOU's respective share of total California-jurisdictional electric revenues for calendar year 2007. 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 13, 2008, the 75th day after the filing date of The Utility Reform Network's request for compensation, and continuing until full payment is made.

3. This proceeding remains open for Phase II.

This order is effective today.

Dated November 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

Compensation Decision:	D0811055	Modifies Decision? No
Contribution Decision(s):	D0802033	
Proceeding(s):	R0705025	
Author:	ALJ Pulsifer	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	04-29-08	\$24,185	\$24,185	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	\$485	2006	\$485
Michel	Florio	Attorney	The Utility Reform Network	\$520	2007	\$520
Michel	Florio	Attorney	The Utility Reform Network	\$535	2008	\$535
Matthew	Freedman	Attorney	The Utility Reform Network	\$300	2007	\$300

(END OF APPENDIX)