

Decision 08-12-056 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company for Authorization to Incur and Recover
Costs Necessary to Determine Feasibility of a
Clean Hydrogen Power Generation Plant.
(U338E)

Application 07-05-020
(Filed May 17, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-04-038**

This decision awards The Utility Reform Network \$13,964.00 in compensation for its substantial contribution to Decision 08-04-038. Today's award payment will be paid by Southern California Edison Company. This proceeding is closed.

1. Background

This decision approves Southern California Edison Company's (SCE) request to conduct a study to evaluate the feasibility of a Clean Hydrogen Power Generation (CHPG) plant subject to certain conditions. The technology under consideration in SCE's application would convert coal through a gasification process into predominately hydrogen and carbon monoxide (CO) gases. The hydrogen gas would be used as the fuel source for a combined cycle power plant designed to burn a high hydrogen fuel, while the CO gas would be removed prior to combustion and sequestered underground in depleted oil fields or saline

aquifers.¹ As an emerging “advanced” clean coal technology, a CHPG plant would produce electric power from coal with minimal greenhouse gas (GHG) emissions by capturing and sequestering CO and burning a hydrogen fuel. SCE submits that if this technology is found to be commercially viable, it could meet California’s energy requirements while achieving the State’s objective to reduce GHG emissions. Decision (D.) 08-04-038 authorizes SCE to proceed with its proposed study, but places limits on the recovery of these costs and outlines procedures SCE must follow to seek recovery from ratepayers.

2. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,² 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).)

¹ If not captured and sequestered, the CO will convert to carbon dioxide (CO₂) when released into the atmosphere.

² All subsequent statutory references 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 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 in which a PHC is held, the intervenor must file and serve its NOI between the dates the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on July 17, 2007. The Utility Reform Network (TURN) timely filed its NOI on August 16, 2007.

On September 11, 2007, Administrative Law Judge (ALJ) Yip-Kikugawa issued a ruling finding TURN a customer as defined in § 1802(b)(1)(C), because TURN’s articles of incorporation specifically authorize its representation of residential ratepayers.

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. TURN meets this requirement through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because it was found eligible for compensation in another proceeding that commenced within one year of this proceeding. TURN received a finding of significant financial hardship in a ruling dated November 11, 2006, in Application 06-06-014.

Regarding the timeliness of the request for compensation, TURN filed its request for compensation on June 10, 2008, within 60 days of D.08-04-038 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.³

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

TURN submits that they made a substantial contribution to the Commission's final decision in this proceeding and references the following Conclusions of Law (Decision, pp. 33-34) in support of its claim:

3. It would be unreasonable for California ratepayers to fund the entire \$52 million for the feasibility study. (*See*, Opening brief of TURN/Western Power Trading Forum (TURN/WPTF Opening Brief) at p. 5.)
4. It is reasonable to authorize only \$4.6 million for Carbon Sequestration Evaluation at this time. (*See*, TURN/WPTF Opening Brief at pp. 18-19.)
5. It is reasonable to permit SCE to seek an additional \$15.8 million in funding for Carbon Sequestration Evaluation and \$26.3 million for CHPG Plant Feasibility work *subject to the conditions specified in this decision*. (Emphasis added.) (*See*, TURN/WPTF Opening Brief at pp. 7-8, 17-18.)
6. It would be unreasonable to require ratepayers to provide additional funding for Carbon Sequestration Evaluation and CHPG Plant Feasibility work if such study is no longer relevant or necessary. (*See*, TURN/WPTF Opening Brief at pp. 7-8, 17-18.)
7. SCE should only be allowed to recover incremental internal labor costs if the Commission approves an SCE advice letter(s) for

³ D.98-04-059, 79 CPUC2d 628 at 653.

recovery of costs associated with Carbon Sequestration Evaluation or CHPG Plant Feasibility work. SCE should track internal labor costs associated with Carbon Sequestration Evaluation and CHPG Plant Feasibility work in a memorandum account and seek recovery in a future General Rate Case to the extent that SCE can demonstrate that they were reasonably incurred and necessary. (*See*, TURN/WPTF Opening Brief at pp. 10-11.)

9. If the feasibility study determines that a CHPG plant with carbon sequestration is technically and commercially feasible, SCE shall conduct a competitive solicitation to build such a plant consistent with the directives of D.07-12-052 and any other then-applicable procurement decisions. (*See*, TURN/WPTF Opening Brief at pp. 15-17.)

12. SCE should seek opportunities to leverage the research authorized in this decision. (*See*, TURN/WPTF Opening Brief at pp. 7-8, 17-18.)

13. SCE shall publicly disclose all detailed study information and results. Study results shall be disclosed even if SCE determines that a project is not feasible. (*See*, TURN/WPTF Opening Brief at pp. 11-12.)

We affirm that TURN made a substantial contribution in this proceeding and commend their coordination efforts with WPTF throughout the proceeding.

4. 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. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

In the September 11, 2007 ruling issued by the ALJ, intervenors were cautioned to avoid duplicating the efforts of other parties by taking the same approach to the same issues as it could result in a reduction in the amount of compensation ultimately awarded. In compliance with this instruction, TURN communicated with several other active parties and determined that its positions in this proceeding would be substantially similar to those of the WPTF. Their joint participation was cost-effective because they were able to co-sponsor the testimony of a single witness, participate through a single attorney at the hearing, and filing joint briefs and comments. As a result, TURN was able to participate at a substantially reduced level of costs than would otherwise have been possible. The amount of compensation requested in this claim is substantially smaller than the initial estimate of \$33,575.00 set forth in TURN's NOI. The end result was clearly beneficial for ratepayers and resulted in costs that were far lower than they would have been, had TURN participated separately. TURN submits that its mode of participation in this proceeding was entirely consistent with the legislative intent underlying the intervenor compensation program, which encourages the effective and efficient participation of all groups in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests. We concur with this assessment.

Regarding contributions by other parties, we agree with TURN 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

other parties. We affirm TURN's assessment that they made concerted efforts to avoid duplication.

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

5. Reasonableness of Requested Compensation

TURN requests \$13,964.00 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel P. Florio	2007	9.50	\$520	\$ 4,940.00
Michel P. Florio	2008	7.25	\$535	\$ 3,878.75
Robert Finkelstein	2007	8.75	\$435	\$ 3,806.25
Nina Suetake	2007	1.25	\$210	\$ 262.50
Subtotal:				\$12,887.50

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel P. Florio	2008	3.50	\$267.50	\$ 936.25
Nina Suetake	2007	1.00	\$105.00	\$ 105.00
Subtotal Hourly Compensation:				\$ 13,928.75
Expenses				\$ 34.90
Total Requested Compensation				\$ 13,964.00⁴

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

⁴ Figure rounded up to nearest dollar amount.

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 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.

Given the limited number of hours that TURN devoted to this case, the fact that it was a single issue proceeding and that TURN actively coordinated its participation with WPTF who took the lead in many aspects of this proceeding, TURN argues that it has not been able to allocate its work in this proceeding by individual sub-issues.

TURN has documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown 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 has requested the following hourly rates for its attorneys. All hourly rates have previously been adopted by the Commission and we adopt them here, as follows:

Attorney/Expert Fees for A.07-05-020

Attorney	Requested Rate	Year	Approved Rate	Justification
M. Florio	\$520	2007	\$520	D.08-03-012
M. Florio	\$535	2008	\$535	D.08-07-043
B. Finkelstein	\$435	2007	\$435	D.07-11-033
N. Suetake	\$210	2007	\$210	D.07-11-033

5.3. Direct Expenses

The itemized direct expenses submitted by TURN include the following:

Lexis Research	\$17.50
Photocopying	\$17.40
Total Expenses	\$34.90

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

In D.98-04-059, the Commission directed intervenors filing compensation requests to attempt to “monetize” the benefits accruing to ratepayers as a result of the intervenor’s participation. In this case, it is difficult to assign a specific dollar amount of savings which resulted from TURN’s work until the feasibility study is completed and the ultimate cost to ratepayers is determined. It is clear however, that the ratepayers will benefit from increased scrutiny of SCE’s study costs (rather than the wholesale preapproval of such costs as requested by SCE) and from potential co-funding by other entities. With this in mind, the benefits to ratepayers of such costs will have exceeded the costs that TURN is seeking in compensation. TURN’s productivity is affirmed by this analysis.

7. Award

As set forth in the table below and consistent with the analysis above, we award TURN \$13,964.00:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel P. Florio	2007	9.50	\$520	\$ 4,940.00
Michel P. Florio	2008	7.25	\$535	\$ 3,878.75
Robert Finkelstein	2007	8.75	\$435	\$ 3,806.25
Nina Suetake	2007	1.25	\$210	\$ 262.50
Subtotal of Hourly Compensation:				\$12,887.50

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michel P. Florio	2008	3.50	\$267.50	\$ 936.25
Nina Suetake	2007	1.00	\$105.00	\$ 105.00
Subtotal NOI and Compensation Preparation:				\$ 1,041.50
Expenses				\$ 34.90

CALCULATION OF FINAL AWARD

Work on Proceeding	\$12,887.50
NOI and Compensation Request Preparation	\$ 1, 041.50
Expenses	\$ 34.90
TOTAL AWARD	\$13,964.00

Pursuant to § 1807, we order SCE to pay this award. 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 24, 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 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), we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Michel R. Peevey is the assigned Commissioner, and Amy Yip-Kikugawa 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 D.08-04-038 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 \$13,964.00.
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.08-04-038.
2. TURN should be awarded \$13,964.00 for its contribution to D.08-04-038.
3. This order should be effective today so that TURN may be compensated without further delay.
4. This proceeding is closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$13,964.00 as compensation for its substantial contributions to Decision 08-04-038.
2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 24, 2008, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.
3. Application 07-05-020 is closed.

This order is effective today.

Dated December 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:	D0812056	Modifies Decision? N
Contribution Decision(s):	D0804038	
Proceeding(s):	A0705020	
Author:	ALJ Yip-Kikugawa	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	06-10-08	\$13,964.00	\$13,964.00	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	\$520	2007	\$520
Michel	Florio	Attorney	The Utility Reform Network	\$535	2008	\$535
Robert	Finkelstein	Attorney	The Utility Reform Network	\$435	2007	\$435
Nina	Suetake	Attorney	The Utility Reform Network	\$210	2007	\$210

(END OF APPENDIX)