Decision 09-03-022 March 12, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Practices of the Southern California Edison Company to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking, its Monitoring and Reporting to the Commission, Refunds to Customers and Other Relief, and Future Performance Based Ratemaking for this Utility.	Investigation 06-06-014 (Filed June 15, 2006)

DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-09-038

Claimant: The Utility Reform Network	**For contribution to Decision 08-09-038**
Claimed ($): $107,491	**Awarded ($): $96,715 (10% reduction)**
Assigned Commissioner: Peevey	**Assigned ALJ: Barnett**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: Decision (D.) 08-09-038 requires Southern California Edison Company (SCE) to refund or forego $48 million in Performance-Based Ratemaking (PBR) customer satisfaction incentives and $35 in PBR safety incentives. The decision requires SCE to refund $32.714 million in money collected for results sharing compensation related to fraudulent PBR results, and orders SCE to pay a fine of $30 million. The decision agrees that SCE should refund or forego all customer satisfaction incentives even though Phase 1 focused on only a portion of the customer satisfaction mechanism. D.08-09-038 finds that SCE management knew of the data falsification and manipulation.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	July 25, 2006	**Yes**
2. Other Specified Date for NOI:	n/a	
3. Date NOI Filed:	August 24, 2006	**Yes**
4. Was the notice of intent timely filed?		**Yes**
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	I.06-06-014	**Yes**
6. Date of ALJ ruling:	11/15/2006	**Yes**
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		**Yes**
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	I.06-06-014	**Yes**
10. Date of ALJ ruling:	11/15/2006	**Yes**
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		**Yes**
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.08-09-038	**Yes**
14. Date of Issuance of Final Decision:	September 23, 2008	**Yes**
15. File date of compensation request:	November 24, 2008	**Yes**
16. Was the request for compensation timely?		**Yes**

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059) **(For each contribution, support with specific reference to final or record.)**

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. Refund of entire $48 million customer satisfaction reward due to performance in planning organization – TURN provided expert analysis showing that poor performance within just one category (planning) would negate all customer satisfaction awards due to the "minimum floor penalty" provision of the PBR mechanism. Testimony of Schilberg, Exh. 75, pp. 14-17. TURN also provided policy testimony against allowing SCE to earn any customer satisfaction rewards. Testimony of Finkelstein, Exh. 74. TURN also provided expert testimony showing that the penalty provisions of the PBR mechanism could result in net penalties of $24 million due to poor performance in just the planning section. Exh. 75, pp. 16-17; Exh. 76, p. 17. TURN provided policy testimony supporting the imposition of the maximum possible $70 million in PBR penalties.	D.08-09-038, pp. 51 – 54 (esp. p. 53). The Decision agrees with DRA and TURN that SCE should forego and refund all $48 million for customer satisfaction. Agrees that "Even if we were to find no manipulation and falsification in Phone Centers and Field Delivery we could not permit a company found to have falsified and manipulated customer satisfaction data to retain $33.6 million of customer satisfaction awards." Agrees that "all PBR customer satisfaction rewards could be forfeit due to poor performance in just the planning and meter reading departments. The floor penalty mechanism of the incentive mechanism could result in a complete refund of the $48 million of rewards, because the mechanism has as an integral component the prevention of deterioration in all four areas." The Decision rejects a PBR penalty as "too speculative." (D.08-09-038, p. 93.)	**Yes**
2. Extent of data manipulation – TURN analyzed record and employee data to show that manipulation was widespread and occurred in 75% of the district offices. Exh. 76, pp. 9-10, TURN showed that eliminating potential negative scores would have	Agrees that "We find that data manipulation and falsification were pervasive throughout the Design Organization and most, if not all, district offices." (D.08-09-038, pp. 18-23.) Agrees that "Both the investigation and the testimony show that these	**Yes**

impacted survey results and was not captured in SCE's analysis of direct fraud. (Exh. 76, pp. 4-7.)	planners knew what would cause Maritz to reject a number and they used that knowledge to screen out customer interactions that might result in negative customer satisfaction surveys." (D.08-09-038, p. 22).	

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding? (Y/N)	**Y**	**Yes**
b. Were there other parties to the proceeding? (Y/N)	**Y**	**Yes**
c. If so, provide name of other parties: CPSD, Greenlining, UWUA		**Yes**
d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: TURN coordinated explicitly with CPSD and DRA to determine the primary issues covered by CPSD and DRA. As a result, TURN focused our expert testimonies and analyses on the issue of "invalid numbers" and other potential forms of falsification and manipulation of the customer satisfaction data sent from SCE's offices to the survey firm. TURN was the only party that independently analyzed the customer satisfaction survey records collected by SCE's survey firm to determine the potential level of direct data fraud and manipulation. TURN also analyzed the extent of potential fraud by conducting analyses of results from different offices. TURN rebutted the analyses conducted by SCE witnesses Silsbee, Berk and others. TURN also provided analysis concerning the potential impact of fraud and manipulation within the planning category on customer satisfaction results due to the nature of the incentive mechanism which averaged results from four categories but with performance floors within each category. TURN explicitly coordinated with CPSD, DRA and Greenlining so as to minimize potential duplication of work. Thus, TURN did not at all address health and safety issues, which were covered by CPSD, DRA and UWUA. TURN conducted no independent analyses concerning management knowledge, though TURN reviewed information presented by CPSD. DRA addressed the issue of refunding results sharing compensation, and TURN only provided legal support in briefs on this issue. Likewise, Greenlining provided expert testimony concerning proper survey techniques, and TURN only provided additional support in briefs concerning the issue of "selling the survey."		**Yes**

C. Additional Comments on Part II (use line reference # or letter as appropriate):

#	Claimant	CPUC	Comment
	X		Please note that the Decision does not specifically identify parties' positions where similar to CPSD. ("Rather than discuss each party's position on each issue, we discuss primarily CPSD's position and refer to other parties when there is a significant difference." p. 9.) While TURN's recommendations were similar to those of the CPSD and/or DRA, TURN provided independent (and the only) analysis of the "invalid records" numbers from the customer satisfaction survey records provided by SCE to Maritz. TURN also provided analysis documenting the geographic extent of data fraud and manipulation within district offices.
	X		TURN requests full compensation for our time, consultant expenses and direct expenses. The Commission adopted TURN's major recommendation (a refund of the entire $48 million in customer satisfaction rewards), though the Commission did not adopt TURN's recommendation for a PBR penalty of $14-70 million. The analyses conducted by TURN's witness Schilberg supported both recommendations. TURN notes that participating in this proceeding required a significant expenditure of resource both to review the underlying documents prepared by CPSD and SCE, as well as to conduct the detailed analysis of customer satisfaction survey records. It would be difficult to allocate separately time devoted to the question of the appropriate amount of PBR refund versus PBR penalty.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

Concise explanation as to how the cost of claimant's participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)	CPUC Verified
This proceeding resulted in direct ratepayer benefits of approximately $145 million. TURN's participation was focused on the $48 million in claimed PBR rewards for customer satisfaction. TURN worked cooperatively with CPSD, DRA and Greenlining on this issue. TURN notes that the CPSD originally proposed that about $14.1 million of the customer satisfaction reward be ordered returned in this Phase of the proceeding. TURN and DRA argued for a full refund based on a) selling the survey, and b) floor penalty impacts of the PBR mechanism. *See*, D.08-09-038, p. 51-54. TURN's collaboration with DRA can thus be credited for a portion of the additional $34 million in customer satisfaction refunds ordered in this Phase of the proceeding. Even assuming TURN can claim credit for only 25% of that amount, the compensation requested here represents approximately 1% of $8.5 million in refunds attained.	**Yes**

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total**	**Year**	**Hours**	**Rate**	**Total**
Marcel Hawiger	2006	137.5	$280	D.06-10-018, p. 39.	$38,500	2006	132.5	280	$37,100
Marcel Hawiger	2007	70.5	$300	D.07-12-026, p. 24.	$21,150	2007	48.97	300	$14,691
Marcel Hawiger	2008	4.25	$325	D.08-08-027, p. 5.	$1,381	2008	4.25	325	$1,381
Robert Finkelstein	2006	9	$405	D.06-10-018, p. 30.	$3,645	2006	9.0	405	$3,645
Robert Finkelstein	2007	2.5	$435	D.07-12-026, p. 24.	$1,088	2007	2.5	435	$1,088
Hayley Goodson	2007	1.5	$210	D.07-12-026, p. 24	$315		Waived		
				Subtotal:	***$65,764[1]***			***Subtotal:***	57,905
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total**	**Year**	**Hours**	**Rate**	**Total**
Gayatri Schilberg	2006[2]	151.61	185	D.08-08-024 (A.07-04-009 -- PG&E AC Cycli)	$28,048	2006	137.7	185	$25,475
Gayatri Schilberg	2007	29.17	175	D.07-12-026, p. 25	$5,105	2007	27.17	175	$4,755
Greg Ruszovan	2006	49.98[3]	165		$7,092	2006	42.98	165	$7,092
				Subtotal:	**$40,244**			***Subtotal:***	$37,322
OTHER FEES **Describe here what OTHER HOURLY FEES you are claiming (paralegal, travel, etc.):**									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total**	**Year**	**Hours**	**Rate**	**Total**
[Person 1]									
				Subtotal:				***Subtotal:***	
INTERVENOR COMPENSATION CLAIM PREPARATION ** **SEE ATTACHMENT 2 FOR DETAILS ON ATTORNEY TIME ALLOCATION**									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total**	**Year**	**Hours**	**Rate**	**Total**
Marcel	2006	.5	140	D.06-10-018, p. 39	$70	2006	.5	140	$70

[1] TURN indicates that it voluntarily waives Goodson's time in 2007, but inadvertently includes these fees in its claim. In calculating the final award, we exclude this amount ($315.00).

[2] In its request, TURN has inadvertently categorized Schilberg's hours for 2006 as 2007 work and her 2007 hours as 2006 work. We correct this mistake here.

[3] Timesheets submitted for TURN's expert Ruszovan's total his hours as 42.98, but TURN mistakenly requests compensation of 49.98 hours. We correct this error in calculating our award.

Hawiger									
Marcel Hawiger	2008	7.5	163	D.08-08-027, p. 5	$1219	2008	7.5	163	$1,223
				Subtotal:	***$1289***			***Subtotal:***	***$1,293***
COSTS									
#	**Item**		**Detail**		**Amount**	**Total Hourly Compensation**			**$96,520**
	Xeroxing		*See* Attach. 4		$73.60				$73.60
	Postage/FedEx		*See* Attach. 4		$19.72				$19.72
	Phone/Fax		*See* Attach. 4		$15.43				$15.43
	Auto/Park/Tolls		*See* Attach. 4. Expert witness travel for hearings.		$85.76				$85.76
				Subtotal:	**$194.51**			***Subtotal:***	$**194.51**
				TOTAL REQUEST $:	**$107,491.31**			**TOTAL AWARD $:**	**$96,715**

When entering items, type over bracketed text; add additional rows as necessary.
*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.
**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. Attachments or Comments Documenting Specific Claim:

Attachment or Comment #	Description/Comment
Attachment 1	**Certificate of Service**
Attachment 2	Time sheets for attorneys showing coded time entries. TURN has grouped our contributions to D.08-09-038 into two issue categories, as shown in TURN's hourly breakdown of activities in Attachment 2, in addition to certain standard activity codes for non-issue specific work. The two issue categories are "policy," for work related to general policy issues concerning performance-based ratemaking (PBR) and proper remedies for the types of activities discovered in this investigation; and "CS" for work related to customer satisfaction PBR performance and the calculation of customer satisfaction survey results. The other categories of codes concern time spent on tasks that are fundamental to participation in a proceeding that cannot be allocated to specific issues (GP), time spent participating in hearings that was not allocable to specific issues (GH), and time spent on purely procedural matters (Proc).
Attachment 3	Time sheets for expert consultant work.
Attachment 4	Direct expense details.
Comment 1	**Basis for 2006 Rate for Greg Ruszovan** TURN requests an hourly rate of $165 for work Ruszovan performed in 2006. This is the same rate that JBS Energy billed TURN for his work during this period. The Commission authorized an hourly rate for Ruszovan of $155 for 2005. (D.06-10-018, p. 40.) The Commission authorized the same rate for Ruszovan as for Nahigian, another expert witness from JBS Energy, Inc., for 1999, 2000, 2001 and 2005. The Commission has approved an hourly rate of $165 for Nahigian's work in

	2006. (D.07-12-026, p. 25.) This is the first proceeding in which TURN requests compensation for Ruszovan for work performed in the second half of 2006. TURN requests that the Commission authorize an hourly rate of $165 for Ruszovan, an increase of 6.5%. Ruszovan is the firm's Senior Energy Analyst, with over 16 years of experience in energy conservation, advanced computer analysis, database programming and utility production simulation modeling. Since joining JBS Energy in 1989, Ruszovan has performed energy-related computer analysis of utility operations, energy data analysis, and major utility customer data base design and development. He has designed and developed a multi-relational database, including a customized data entry program for each major utility, to process and analyze individual facility energy use data. He has built models to integrate analysis of hourly market pricing data and hourly load data for individual customers or customer classes. He has provided consulting services on computer systems, both in hardware design and software operation, for a variety of clients and for the internal operations of JBS. The Commission should use the $165 rate for Ruszovan's work in 2006 for two reasons. First, this is the rate JBS Energy billed TURN, as well as other fee-paying clients, for his work during that year. In the absence of any evidence that it is not a reasonable rate or one that is consistent with market rates for similarly trained and experienced consultants, the Commission should award compensation using the billed rate. Using something less than that only serves to penalize the consultant's firm or the intervenor by creating a shortfall that must be borne by at least one of those two parties. Such a shortfall is inconsistent with Section 1801.3(b) of the Pub. Util. Code. Second, in light of the fact that the Commission recognized that the similarity of training and experience between Nahigian and Ruszovan warranted identical hourly rates from 1999 through 2001 and in 2005, there is no reason to abandon this logic in 2006 only because Ruszovan has not conducted work on behalf of TURN in other proceedings. The Commission should use the requested $165 hourly rate for his work in 2006.
Comment 2	TURN does not see compensation for 0.5 hours of Florio's time shown in Attachment 2.
Comment 3	TURN does not seek compensation for 1.58 hours of Schilberg's time in 2008 shown in Attachment 3.
Comment 4	TURN does not seek compensation for 1.5 hours of Goodson's time in 2007, shown in Attachment 2.

D. CPUC Disallowances & Adjustments (CPUC completes):

#	Reason
M. Hawiger	2006 totals reduced 5 hrs for excessiveness. 2007 hrs reduced 21.53 hrs-excessiveness and duplication.
G. Schilberg	2006 hrs reduced 13.88 hrs for excessiveness and duplication. 2007 hours reduced 2.0 hrs for excessiveness.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this claim, Commission Staff or any other party may file a response to the claim (*see* § 1804©)

(CPUC completes the remainder of this form)

A. Opposition: Did any party oppose the claim (Y/N)? **No**

If so:

Party	Reason for Opposition	CPUC Disposition

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6)) (Y/N)? **Yes**

If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.08-09-038.

2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

3. The total of reasonable contribution is $96,715.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded $96,715.
2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay claimant 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 February 7, 2009, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Investigation 06-06-014 remains open to address other matters.

This order is effective today.

Dated March 12, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

Compensation Decision Summary Information

Compensation Decision:	D0903022	**Modifies Decision? No**
Contribution Decision(s):	D0809038	
Proceeding(s):	I0606014	
Author:	ALJ Barnett	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	11-24-08	$107,491	$ 96,715	No	Excessive hours, miscalculations by TURN, duplication of efforts.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	$280	2006	$280
Marcel	Hawiger	Attorney	The Utility Reform Network	$300	2007	$300
Marcel	Hawiger	Attorney	The Utility Reform Network	$325	2008	$325
Robert	Finkelstein	Attorney	The Utility Reform Network	$405	2006	$405
Robert	Finkelstein	Attorney	The Utility Reform Network	$435	2007	$435
Gayatri	Schilberg	Expert	The Utility Reform Network	$175	2006	$175
Gayatri	Schilberg	Expert	The Utility Reform Network	$185	2007	$185
Greg	Ruszovan	Expert	The Utility Reform Network	$165	2006	$165

(END OF APPENDIX A)