

Decision 09-03-045 March 26, 2009

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

Order Instituting Rulemaking to Examine the  
Commission's Post-2005 Energy Efficiency  
Policies, Programs, Evaluation, Measurement,  
and Verification, and Related Issues.

Rulemaking 06-04-010  
(Filed April 13, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY  
REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION  
(D.) 07-09-043, D.07-10-032 AND D.08-01-042, AND PARTICIPATION IN THE  
ENERGY EFFICIENCY ADVISORY GROUP PROCESS**

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APPENDIX – Compensation Decision Summary Information

**DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 07-09-043, D.07-10-032 AND D.08-01-042, AND PARTICIPATION IN THE ENERGY EFFICIENCY ADVISORY GROUP PROCESS**

This decision awards The Utility Reform Network \$358,258.75 in compensation for its substantial contributions to Decision (D.) 07-09-043, D.07-10-032 and D.08-01-042, and participation in the Energy Efficiency Advisory Groups. This represents a decrease of \$31,749.68 or approximately 8% from the amount requested due to excessive hours, unproductive work, and inappropriately claimed expenses (travel). Today's award payment will be allocated to the affected utilities. This proceeding remains open to address remaining issues of the proceeding.

**1. Background**

The Commission opened this rulemaking on April 13, 2006, to consider the design, delivery and management of utility energy efficiency programs. The May 24, 2006 Scoping Memo identified the following major issues of the proceeding:

1. Shareholder Risk/Reward Incentive Mechanism;
2. Evaluation, Measurement and Verification (EM&V);
3. Refinements to Policy Rules and Reporting Requirements;
4. Updates to Energy Efficiency Potentials Studies and Savings Goals;
5. Implementation of 2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle; and
6. Transition Issues and Filings Related to Pre-2006 Programs.

D.07-09-043 in Phase I of the proceeding resolved the first two issues and established parameters that would govern awards of incentive payments to the utilities for their energy efficiency program accomplishments. D.08-01-042 approved, in part, a joint petition by the utilities for modification of D.07-09-043,

and adopted the utilities' requested changes to the true-up provisions of that decision.

D.07-10-032 in Phases III, IV, and V of the proceeding resolved Issues 3, 4, and 5 from the above list. It directed the utilities to prepare a comprehensive statewide strategic plan; adopted three programmatic initiatives; provided direction for the "next generation" of California utility energy efficiency programs for 2009-2011; committed in the near term to adopting utility energy efficiency goals through 2020; reaffirmed the previously adopted 2009-2011 goals; and established new collaborative processes with key stakeholders.

The Scoping Memo and Ruling of April 13, 2007, explained that this proceeding consists of three parts: updates of goals, policies, and rules for portfolio development; handling the 2009-2011 portfolio filing, review, and authorization; and treatment of longer term issues involving strategies as they will be carried out beyond 2011 and in coordination with the Assembly Bill 32 Greenhouse Gas implementation plan.

This proceeding has also been addressing policy issues related to ongoing 2006-2008 energy efficiency programs and energy efficiency policies. For instance, pursuant to D.05-09-043 (Application (A.) 05-06-004 et al.) and D.06-06-063 (in Rulemaking (R.) 04-04-025), the Commission in this proceeding has undertaken the "Load Shape Update Initiative" (LSUI) and other quality control and quality assurance activities (QA-QC) associated with Evaluation, Measurement and Verification (EM&V) data, avoided costs, and other cost-effectiveness inputs in the E3 calculator, including the application of the Total Resource Cost (TRC) test. Additionally, the Commission has adopted quarterly and annual reporting requirements, and adopted updates to the Energy Efficiency Policy Manual.

Lastly, this proceeding has encompassed ongoing activities related to the implementation of the 2006-2008 portfolios, including consideration of recommendations made by the utility peer review groups during 2006-2008, such as those included in the peer review group reports filed with the utilities' compliance advice letters.

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

The intervenor compensation program, which is set forth in California Public Utilities 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 to claim compensation (NOI) 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).)

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

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. Requirements for Award of Compensation for Participation in Program Advisory Group**

TURN requests compensation for its participation in the utilities’ program advisory groups (PAGs). Since details of these group’s activities are protected by confidentiality agreements, it is important for the Commission to have sufficient non-confidential information to make the findings required by §§ 1801-1812. D.07-11-024 sets requirements for intervenors requesting compensation for participation in PAGs. It directs intervenors to indicate types of programs, policies, practices or documents reviewed in connection with their work and how that work contributed to an outcome that benefited ratepayers. The intervenors should also explain how their unique analysis, perspective or work product or specific expertise or skills added value to the review or advisory process.<sup>2</sup>

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<sup>2</sup> D.07-11-024, pp. 5-6.

## **2.2. 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 in the period of time between the date the proceeding was initiated and the 30<sup>th</sup> day after the PHC is held. (Rule 17.1(a)(1).) PHC in this matter was held on May 9, 2006. TURN timely filed its NOI on June 8, 2006.

On June 28, 2006, Administrative Law Judge (ALJ) Gottstein issued a ruling, determining that TURN is a customer pursuant to § 1802(b)(1)(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 the NOI, TURN asserted financial hardship. The June 28, 2006 ruling found that TURN met the financial hardship condition through a rebuttable presumption of eligibility (§ 1804(b)(1)) created by the November 4, 2005 ruling issued in A.05-02-027. The June 28, 2006 ruling determined and we affirm that TURN is eligible to claim compensation in this proceeding.

D.08-01-042 was mailed on February 1, 2008. On April 1, 2008, TURN filed its request for an award of compensation for substantial contribution to D.07-09-043, D.07-10-032 and D.08-01-042.<sup>3</sup> The request was filed within 60 days of the date of issuance of D.08-01-042, which is timely under the provisions of § 1804(c). No party opposed the request.

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<sup>3</sup> On March 20, 2009, the Commission received a letter from TURN containing additional clarifications of certain elements of the request for compensation. The letter was placed in the "Correspondence" file for the proceeding.

We find that TURN has satisfied all the procedural requirements necessary to request 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.<sup>4</sup>

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

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<sup>4</sup> D.98-04-059, 79 CPUC2d 628 at 653.

### **3.1. Contributions to D.07-09-043 (Phase 1)**

D.07-09-043 adopted a shareholder risk/reward incentive mechanism (the “Energy Efficiency Shareholder Incentive” or “EESI” mechanism) and claims process for energy efficiency activities in 2006-2008 and 2009-2011.

TURN contributed mainly by presenting arguments against using a supply-side comparability method for calculating the proper allocation of net savings to shareholders, and by advocating two alternative methods for determining the proper sharing rate. TURN also proposed a mechanism for measuring performance and allocating shared savings.

We find that TURN substantially contributed to D.07-09-043, as described in more detail below:

**Policy Issues Concerning the Proper Methodology for Calculating a Shared Savings Rate.** TURN analyzed a fundamental policy issue of the appropriate method for calculating an incentive rate and although TURN’s policy arguments were ultimately rejected,<sup>5</sup> TURN’s recommendations occupied a large part in the Commission’s discussion on this issue. D.07-09-043 adopted several of TURN’s other recommendations, such as the proper resource mix used to calculate supply-side comparability, the inappropriateness of including debt equivalence, true-up and the claims process, the treatment of certain costs and benefits in the calculation of cost-effectiveness and performance earnings basis (PEB) .

**Factual and Technical Issues in Calculating Supply-Side Comparability.**

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<sup>5</sup> D.07-09-043, pp. 58-92.

TURN successfully argued that there were factual issues in dispute concerning the proper calculation of a shared savings rate that warranted evidentiary hearings,<sup>6</sup> and identified the specific issues of dispute.

TURN proposed<sup>7</sup> adjustments to PG&E's calculation of "supply-side comparability" that reduced the avoided supply side costs by 26%. TURN testified that PG&E made some unreasonable assumptions in all supply-side generation investment areas. Based on this critique, PG&E discovered errors in its calculations errors which increased the avoided cost numbers.

The Commission adopted, in part, TURN's recommendations by finding that substitution of combustion turbines (CT) costs in the model proposed by TURN created "a range of possible outcomes around the base case assumptions for the purpose of calculating comparable earnings."<sup>8</sup> The Commission calculated the upper range as approximately \$700 million in utility earnings, and then found that "removing debt equivalence and substituting 24% of avoided CCGT costs with CT capacity costs, as TURN recommends, will produce the lower range of the calculations"<sup>9</sup>. The Commission ultimately adopted this \$450 million lower end of the range as the cap on maximum earnings<sup>10</sup>. TURN's technical calculation of supply-side earnings thus directly contributed to the setting of the lower end of the range of comparable earnings.

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<sup>6</sup> "Assigned Commissioner's Ruling Revising the Phase I Determination on Hearings and Procedural Schedule and Notice of Phase I Evidentiary Hearings," March 26, 2007.

<sup>7</sup> "Analysis of Proper Sharing Rates for an Energy Efficiency Incentive Mechanism," William Marcus on behalf of TURN, May 3, 2007.

<sup>8</sup> D.07-09-043, mimeo., p. 100.

<sup>9</sup> D.07-09-043, mimeo., p. 101.

<sup>10</sup> D.07-09-43, p. 105.

**Structural Elements of the Incentive Mechanism.** In setting the appropriate tier levels, D.07-09-043 used TURN's argument that "earnings that approach comparable supply-side levels should be awarded at a level of superior performance."<sup>11</sup> Although we rejected TURN's contention<sup>12</sup> that earnings should start only at a performance level of 100%,<sup>13</sup> TURN's input to the Commission's deliberations on this issue was very effective.

**EESI Claims Calculation Rules and Procedures for Reviewing and Approving Claims.** The Commission agreed with TURN that all EM&V costs should be included in PEB,<sup>14</sup> that Codes & Standards advocacy costs should be booked in the program cycle in which they are incurred for calculating PEB,<sup>15</sup> and that the net-to-gross ratio should not be applied to utility costs in cost-effectiveness calculations and the PEB because dollars paid to free-riders through utility incentives are real costs to ratepayers.<sup>16</sup>

In the area of methods for counting savings and costs associated with mid-cycle program funding augmentations towards the goals and PEB, TURN recommended to modify the proposed decision (PD) leading to D.07-09-043 by replacing the case-by-case approach with a specific policy rule that savings from mid-cycle funding additions should not count towards the goals for the purpose

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<sup>11</sup> D.07-09-043, p. 106.

<sup>12</sup> See, TURN's opening brief of June 18, 2007, p. 18.

<sup>13</sup> D.07-09-043, p. 26.

<sup>14</sup> See, D.07-09-043, p. 142 (also granting a limited exception for EM&V costs associated with Emerging Technologies Program).

<sup>15</sup> D.07-09-043, p. 145.

<sup>16</sup> D.07-09-043, pp. 160-162.

of satisfying the Minimum Performance Standard (MPS), but should be counted when calculating PEB. D.07-09-043 adopted TURN's approach.<sup>17</sup> Subsequently, D.07-10-032 adopted TURN's recommended policy for energy efficiency mid-cycle funding additions.

Concerning the claims-related procedures, the Commission, following TURN's recommendations, did not adopt Natural Resources Defense Council's (NRDC) proposal to base the final claim on the verification report rather than *ex post* impact studies, if such studies are not timely. The Commission also found, as TURN recommended, that additional pre-review step for implementers and administrators would be unnecessary.<sup>18</sup> D.07-09-043 also followed TURN's recommendations in clarifying that the procedures for claims apply equally to earnings claims and penalties.<sup>19</sup> TURN successfully opposed efforts by parties to limit the full true-up in the final claim.<sup>20</sup> D.07-09-043 concluded that only a full, unrestricted true-up in the final claim would be fair to ratepayers and consistent with our policies,<sup>21</sup> as TURN recommended. The Commission adopted TURN's reasoning<sup>22</sup> directed against the IOUs' arguments

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<sup>17</sup> D.07-09-043, p. 148.

<sup>18</sup> D.07-09-043, p. 135.

<sup>19</sup> D.07-09-043, p. 137.

<sup>20</sup> TURN comments of September 8, 2006, pp. 20-21; reply comments of September 29, 2006, pp. 12-14.

<sup>21</sup> D.07-09-043, pp. 121-123.

<sup>22</sup> TURN Reply Comments on Phase I PD, September 4, 2007, pp. 1-2.

that the Phase I PD would subject them to unforeseen or unfair “EM&V risk” by applying *ex post* net-to-gross ratios in the final PEB true-up.<sup>23</sup>

### **3.2. Contributions to D.08-01-042 (Phase 1)**

D.08-01-042 addressed the utilities’ joint petition for modification of D.07-09-043 arguing that achievement of the MPS should be established based on verification of measure installations using *ex ante* planning estimates of load impacts, rather than *ex post* impacts, and seeking to keep all interim payments based on *ex ante* claims if the final true-up claim based on *ex post* results indicates that those interim payments were excessive, where *ex post* results fall into the deadband or higher. TURN opposed the requests.

Although the Commission granted the petition, it agreed with TURN’s position on many issues: that the source of *ex ante* assumptions the utilities would be required to use in interim claims<sup>24</sup> needed to be clarified; that it would not be appropriate for the utilities to use the *ex ante* assumptions they used in planning their 2006-2008 portfolios, as more realistic *ex ante* values existed;<sup>25</sup> that “[u]pdating measure load impacts using the DEER database prior to the payout of interim claims in 2008 and 2009 should help to mitigate the risk of extremely large swings in earnings at the final earnings true-up,”<sup>26</sup> that the utilities should already be using best available *ex ante* data in estimating 2006-2008 portfolio impacts, rather than outdated values (*Id.*); and that the utilities’ attempt to limit

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<sup>23</sup> See, D.07-09-043, p. 173-174.

<sup>24</sup> D.08-01-042, p. 15.

<sup>25</sup> *Id.*; see also TURN Response to Joint Petition, pp. 15-18.

<sup>26</sup> D.08-01-042, p. 17.

the scope of the 2008 and 2009 updates to *ex ante* parameters that they would be required to use in their first and second interim claims<sup>27</sup> should be rejected.

We find that TURN made substantial contributions to D.08-01-042.

### **3.3. Contributions to D.07-10-032**

D.07-10-032 addressed the issues of long term strategic planning; bold programmatic initiatives; portfolio composition and development rules for 2009-2011; changes to the administrative structure, including advisory groups and EM&V procedures; and goals and counting rules for 2009-2011 and beyond. We find that TURN substantially contributed to that decision, as explained in more detail below:

**Long-Term Strategic Planning.** The Commission agreed with TURN's recommendations that a directed, statewide planning effort resulting in a statewide energy efficiency plan through 2020 would deliver more savings, create new savings opportunities, and afford efficiencies in the development and delivery of programs,<sup>28</sup> "that we must reiterate the goal of using ratepayer-funded energy efficiency programs to transform the market and incorporate efficiency gains into codes and standards." (*Id.*, p. 21); and that the utilities should respond to stakeholders' written comments on the draft Strategic Plan.<sup>29</sup>

**Big / Bold Programmatic Initiatives.** TURN has been advocating increased attention to residential and small commercial Heating, Ventilation and Air Conditioning (HVAC) load in ratepayer-funded energy efficiency programs,

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<sup>27</sup> See D.08-01-042, p. 16.

<sup>28</sup> D.07-10-032, p. 20.

<sup>29</sup> TURN's Comments on PD-D.07-10-032, October 9, 2007, pp. 2-3 and 27.

and supported the Commission's plans to consider a "Big/Bold Energy Efficiency Strategy" (BBEES).<sup>30</sup>

We took TURN's advocacy into consideration when we adopted a BBEES initiative targeting residential and small commercial HVAC,<sup>31</sup> concluded that a HVAC initiative must be structured to overcome "[w]idespread disregard for Title 24 standards and permit requirements....",<sup>32</sup> contemplated the breadth required for a meaningful HVAC BBEES,<sup>33</sup> and modified the PD leading to D.07-10-032 to ensure transparency in utility requests for spending authorization related to the BBEES.<sup>34</sup>

**2009-2011 Portfolio Design and Policy Rules.** D.07-10-032 addressed TURN's concerns and recommendations<sup>35</sup> and provided the utilities with concrete directives about what the Commission expected in this area, and particularly, the Commission's concerns with residential compact fluorescent lamps (CFL)-driven portfolios.<sup>36</sup>

D.07-10-032 adopted TURN's requested clarification that the cumulative savings goals adopted in D.04-09-060 reflect measure lifecycle savings, rather than a summation of the measure first-year savings,<sup>37</sup> as well as TURN's

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<sup>30</sup> TURN comments of May 29, 2007, p. 6.

<sup>31</sup> D.07-10-032, pp. 38, 50.

<sup>32</sup> D.07-10-032, p. 51, 52.

<sup>33</sup> See, D.07-10-032, pp. 52-53.

<sup>34</sup> TURN Comments on PD-D.07-10-032, pp. 3-4 and D.07-10-032, p. 39, fn. 43.

<sup>35</sup> See, for example, TURN comments of June 8, 2007, pp. 3-7.

<sup>36</sup> D.07-10-032, p. 22.

<sup>37</sup> D.07-10-032, p. 79.

rationale<sup>38</sup> on that issue; directed the utilities to report the expected cumulative savings, using the clarified definition; and explained that this definition would be included in Commission's Verification and Performance Earnings Basis reports.<sup>39</sup> TURN argued that the utilities had failed to comply with Energy Efficiency Policy Rule II.5 in their 2006-2008 portfolio applications, and requested the Commission to strengthen and enforce this rule in 2009-2011. The PD leading to D.07-10-032 included TURN's proposals<sup>40</sup> but D.07-10-032 adopted a less restrictive requirement.<sup>41</sup>

Responding to TURN's recommendations,<sup>42</sup> D.07-10-032 directed the utilities "to create or continue on-bill financing pilot programs for small commercial customers" and "to continue to investigate [on-bill financing] programs for ... residential customers";<sup>43</sup> modified the fund-shifting rules,<sup>44</sup> modified the PD's treatment of "carryback" and "carryover" funding between program cycles to promote the efficient use of funds and to clarify the "counting" rules associated with bridge funding,<sup>45</sup> and, finally, adopted the new

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<sup>38</sup> D.07-10-032, p. 81.

<sup>39</sup> D.07-10-032, pp. 81-82.

<sup>40</sup> TURN/Community Environmental Council comments of July 25, 2007, pp. 23-24. PD-D.07-10-032, pp. 74-75.

<sup>41</sup> D.07-10-032, p. 84.

<sup>42</sup> See, i.e., TURN comments of July 10, 2007, p. 10; TURN/CE Council comments of July 25, 2007, pp. 38-39.

<sup>43</sup> D.07-10-032, p. 92.

<sup>44</sup> TURN/DRA comments of June 18, 2007, pp. 16-17; see also TURN/CE Council comments of July 25, 2007, pp. 19-20; D.07-10-032, pp. 97-98.

<sup>45</sup> See, D.07-10-032, p. 95.

policy rule regarding mid-cycle program funding additions proposed by TURN.<sup>46</sup>

**Energy Efficiency Administrative Structure: Advisory Groups and EM&V Process.** The Commission relied on TURN's assessment in eliminating the PAG process for the 2009-2011 planning process and program cycle.<sup>47</sup> TURN recommended that the PD leading to D.07-10-032 be modified to clarify the role of the peer review groups (PRGs).<sup>48</sup> TURN further recommended modifying the EM&V process to improve the likelihood of timely information being available for program administrators, and the quality of information.<sup>49</sup> The Commission adopted changes recommended by TURN.<sup>50</sup>

**Energy Efficiency Goals and Rules Regarding What Counts.** D.07-10-032 adopted some of TURN's recommendations to modify the goals adopted in D.04-09-060, setting of future goals, and rules regarding what savings will be counted towards the goals. For instance, we agreed with TURN that the 2009-2011 goals adopted in D.04-09-060 should not be modified, with the exception of SDG&E's goals, because of their disproportionately high level.<sup>51</sup> The Commission also accepted TURN's position not to continue for the 2009-2011 program cycle,<sup>52</sup> the current Commission policy regarding savings from

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<sup>46</sup> D.07-10-032, pp. 100-101.

<sup>47</sup> D.07-10-032, pp. 105-106.

<sup>48</sup> TURN Comments on PD, Oct. 9, 2007, pp. 10-11.

<sup>49</sup> D.07-10-032, p. 106.

<sup>50</sup> D.07-10-032, pp. 109-110.

<sup>51</sup> D.07-10-032, pp. 114-117.

<sup>52</sup> D.07-10-032, p. 120.

pre-2006 and 2006-onward Codes & Standards (C&S) programs. The Commission positively responded to TURN's proposal to allow the utilities to count towards their goals all savings attributable to utility compliance efforts in addition to their work assisting in C&S changes.<sup>53</sup>

### **3.4. Contributions to the Implementation of D.06-06-063**

D.06-06-063 in R.04-04-025 directed the parties to undertake immediate updates to the E3 Calculator, improve E3 Calculator quality assurance/quality control (QA-QC) and the Load Shape Update Initiative, submit a compliance report,<sup>54</sup> and present the revised E3 calculators to their PAGs/PRGs prior to submitting the revisions.<sup>55</sup> Ensuring compliance with that decision was deferred to this proceeding,<sup>56</sup> and therefore it is appropriate that TURN seeks compensation for its contributions to the implementation of D.06-06-063<sup>57</sup> here. We find that TURN substantially contributed to the implementation of D.06-06-063, as more fully described below:

**E3 Calculator Quality Assurance / Quality Control.** TURN recommended in its comments of September 22, 2006, and during workshops convened by the utilities in October and November of 2006, to correct inconsistencies in how the utilities treated direct install incentives within the E3 workbook, to comport with

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<sup>53</sup> D.07-10-032, pp. 120-121.

<sup>54</sup> D.06-06-063, p. 10.

<sup>55</sup> D.06-06-063, p. 79.

<sup>56</sup> D.06-06-063, p. 10.

<sup>57</sup> We have awarded compensation for contributions to implementation of decisions under similar circumstances. For example, D.06-11-038 in R.04-04-003 found that an intervenor made substantial contributions in that proceeding to a post-decision activities ordered by the Commission in another proceeding.

D.06-06-063.<sup>58</sup> TURN pointed out that the utilities had not fully discussed the data sources and basis for the non-Database for Energy Efficient Resources (DEER) energy and demand estimates with their advisory groups, as required by D.06-06-063. TURN assessed the progress in resolving QA-QC matters through workshops and meetings as disappointing, and noted data reliability problems.<sup>59</sup>

Several of TURN's recommendations were adopted by December 21, 2006 ruling<sup>60</sup> and reflected in D.08-01-042.<sup>61</sup> For instance, the decision clarified that DEER would be updated in 2008 and 2009 and improved the QA-QC process for non-DEER values.<sup>62</sup> We partially affirmed TURN's position that the Commission should control the data used to calculate energy efficiency performance earnings basis for application in the energy efficiency shareholder incentive mechanism.<sup>63</sup>

**Load Shape Update Initiative (LSUI).** D.06-06-063 directed the utilities to present a LSUI report with public input from workshops and otherwise.<sup>64</sup> The Energy Division was to develop, based on these reports, the study scopes, specific work tasks, schedules and budgets for load shape improvements (*Id.*)

TURN participated actively in the LSUI workshops, and improved the efficacy of the LSUI, as in the case with PG&E's claim that its shapes were based on hourly data, and did not need updates. Upon TURN's request, consultant

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<sup>58</sup> TURN/DRA's comments of September, 2006, pp. 2, 6-7.

<sup>59</sup> *Id.*, pp. 2, 11.

<sup>60</sup> December 21, 2006 ALJ's Ruling *Addressing Compliance Filings Pursuant to Decision 06-06-063*.

<sup>61</sup> D.08-01-042, pp. 16-17.

<sup>62</sup> *Id.*, Ordering Paragraph 3(c).

<sup>63</sup> ALJ's Ruling of August 8, 2007, p. 3.

<sup>64</sup> D.06-06-063, p. 60.

KEMA analyzed PG&E's claim and confirmed that PG&E had not used hourly data, PG&E withdrew its claim. TURN recommended focusing the near-term scope of the LSUI to tasks that could be done to get a one-time update to the 2006-2008 portfolio calculations of projected savings and net benefits, updating a stakeholder consensus agreement, and immediately correcting to the TRC and PAC calculations.

The Final LSUI report (Report) takes TURN's approach that the LSUI did not need to update load shapes for all 6,000 different energy efficiency measures.<sup>65</sup> The Report incorporates TURN's recommendation that the uncertainty in measure shape (as it affects the unit-avoided cost) should be considered in prioritizing measures for load shape update<sup>66</sup> and adopts TURN's position that reasonable accuracy measure load shapes would be necessary for energy long-term procurement planning.<sup>67</sup>

### **3.5. Substantial Contribution to Ongoing EM&V and 2006-2008 Portfolio Oversight Activities**

An ALJ's Ruling of August 8, 2007, adopted a number of TURN's recommendations: to place a disclaimer on each page of the Reporting Requirements Manual (RRM);<sup>68</sup> to require the utilities to report measure installations in their quarterly filings at the individual measure level and not

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<sup>65</sup> LSUI Report, p. 5-5, Table 5.2.

<sup>66</sup> LSUI Report, p. 4-4, Section 4.2.2, Goal 2; see also LSUI Report, p. 8-10, "DEER Update Process Related to Measure Load Shapes," Section 8.3.2, Need for Climate Zone Detail.

<sup>67</sup> LSUI Report, p. 4-4, Section 4.2.1, Goal 1.

<sup>68</sup> Workshop Report, p. 7, and RRM4, p. 2, adopted by the August 8, 2007 Ruling, paragraph 1.

rolled up or aggregated;<sup>69</sup> to require PG&E to report savings based on the program level (rather than “mass markets”);<sup>70</sup> to require the utilities to report annual and lifecycle kWh and therm savings in their annual reports, rather than only annual savings as Energy Division had originally proposed;<sup>71</sup> and to add to Version 3.1 of the Energy Efficiency Policy Manual Policy Rule IV.12 on mid-cycle funding additions.<sup>72</sup>

TURN also includes in its request the time spent on participating in the Commission’s EM&V workshop in July 2006 on the DEER update and potentials study, the revised EM&V priorities and contract groups, and coordination of the Energy Division EM&V work with utility M&V and project inspections. TURN submitted post-workshop comments to the Energy Division, and has continued to actively follow EM&V related issues emerging in the 2006-2008 portfolios – both in the context of QA-QC and LSUI activities, but also more specifically related to utility and the Energy Division EM&V 2006-2008 activities.

We find that TURN substantially contributed to the ongoing EM&V-related and 2006-2008 portfolio oversight activities.

### **3.6. Substantial Contribution to the Energy Efficiency Advisory Group Process**

TURN has been an active participant in the energy efficiency program advisory group (PAG) process since its creation by D.05-01-055. TURN indicates

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<sup>69</sup> Workshop Report, pp. 13-14, adopted by August 8, 2007 Ruling, Paragraph 4.

<sup>70</sup> Workshop Report, pp. 8-9, adopted by August 8, 2007 ruling, Paragraph 4.

<sup>71</sup> TURN Comments, October 26, 2007, pp. 3-4; RRM4, pp. 2-3, adopted by August 8, 2007 Ruling, Paragraph 1.

<sup>72</sup> (See Attachment 1 to the Assigned Commissioner’s Ruling of January 8, 2008.)

what types of the programs, policies, practices, and documents it reviewed in connection with its PAG work.

TURN asserts that its ongoing contributions to the PAG/Peer Review Groups (PRGs) process provide ratepayer benefits by assisting the Commission in achieving its energy efficiency goals, thus helping to mitigate rate increases stemming from supply side procurement expenditures, as well as providing economic and environmental benefits from avoided emissions.

Aside from the general ratepayer benefits, TURN indicates that its PAG and PRG work have contributed to ratepayer benefits by helping to improve the composition and functioning of the 2006-2008 portfolios and integrated resource planning in California. For instance, TURN's advocacy regarding the importance of tracking and monitoring energy savings by key end uses has helped to better position energy efficiency as the first loading order resource. At TURN's urging, the IOUs' PAG portfolio status meetings have come to include an overview of portfolio delivery by key end use (for example, at its PAG/PRG workshop, SCE reported that 70% of its energy savings to date were from CFLs, whereas around 30% had been forecasted).

TURN's assistance to PG&E, SCE and SoCalGas with their third-party solicitations has assisted in incorporating new program designs and delivery mechanisms into their portfolios. TURN's efforts to explore the feasibility of statewide third-party bidding could potentially contribute additional benefits from economies of scale and scope, and decreased administrative costs. TURN's work to improve the functioning of local government partnerships through the PRGs should enhance the long-term value of the portfolios.

TURN contributed to the PAG/PRG Process Evaluation Report and the PRG's Substance Report that helped the Commission to assess the efficacy of the

PAG and PRG process. Based, in part, on these reports, D.07-10-032 eliminates PAGs for the 2009-2011 program cycle. TURN's work with the HVAC PAGs helped the utilities to identify problems with their HVAC programs targeting residential and small commercial space cooling load. In accord with TURN's recommendations, the Commission found that HVAC programs could potentially lead to substantial cost-effective energy savings during peak periods.<sup>73</sup> TURN asserts that its work added value to the PRG/PAG process. TURN's primary representative on the PG&E and SCE/SoCalGas PAGs and PRGs has been Cynthia Mitchell, who has extensive experience in energy efficiency program design, evaluation and assessment matters. For example, TURN championed the differentiation of energy efficiency savings into key end uses and measure groups. As a result of Mitchell's efforts, such differentiation has been accepted in California energy efficiency reporting relieving parties from the tedious manual review.

TURN asserts that as an active participant of the LSUI, Mitchell was uniquely able to bring information and insight gained from that work to the PAGs. For instance, Ms. Mitchell asked SCE and SoCalGas to provide their PAG members with information about the performance of their 2006-2008 portfolios that corresponded with the types of data groupings used by consultant KEMA in the LSUI.

TURN states that Mitchell led the PRG/PAG effort to develop a framework for exploring the reasonableness of statewide third-party solicitations. TURN brought to the PAG/PRG process expertise regarding the

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<sup>73</sup> D.07-10-032, Finding of Fact 11, p. 133.

technical, engineering, and program design and implementation issues related to HVAC and provided valuable perspective to the PAG/PRG process and substance evaluations.

Based on TURN's representations regarding its PAG/PRG work and our analysis of TURN's substantial contributions to the same areas in this proceeding, we find that TURN made substantial contributions to the energy efficiency PAG/PRG activities.

#### **4. Contributions of Other Parties**

In a proceeding involving multiple participants, it is often 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, such as collaborating closely with DRA. TURN and DRA worked together on numerous issues (i.e., reviewing the Staff's proposed shareholder incentives claims process; certain elements of an energy efficiency shareholder incentive mechanism, etc.). At the same time, TURN and DRA presented different points of views or approaches to some of the issues (for example, different alternative models for calculating a proper sharing rate; or the impact of reduced capital spending due to energy efficiency on utility shareholders, where DRA presented the theoretical explanation of why the appropriate earnings rate should be zero, while TURN presented an analysis of utility financial planning that showed that the earnings rate should be reduced by the expected long-term stock market returns).

TURN's timesheets clearly demonstrate that TURN made efforts to reduce duplication by coordinating its work with other parties (NRDC, CE Council, Aglet, DRA) where possible. The formal record of the proceeding contains joint documents by TURN and other parties (DRA, Aglet). At the same time, on

certain issues TURN and other parties reached significantly different conclusions.

Comparing TURN's participation in PAG/PRG with that of other group members, TURN states that it played the leadership role in bringing to the PRGs' attention concerns about ever-increasing portfolio reliance on short-term savings, such as lighting. TURN provided an extensive expertise on third-party bidding. While taking the lead on some PAG and PRG efforts, TURN collaborated closely with the PAG/PRG members, to minimize duplication of effort. TURN worked closely with DRA and NRDC in reviewing the second round third-party solicitations. As a result, the parties were able to work towards a consensus regarding the scoring of the third-party proposals. TURN and DRA worked collectively on addressing the problems between PG&E and its local government partnerships. TURN acted as the organizer for the PRG members in its effort to bring in other PRG members to collaborate on the third-party statewide bidding issue. TURN's timesheets reflect TURN's efforts at initiating and coordinating collaboration among the group members.

We find that the award should not be reduced for duplication.

## 5. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$390,008.43, as follows:

Name	Year	Hour s	Rate	Total
<b>Attorney Fees</b>				
Hayley Goodson	2003	0.50	\$190.00	\$95.00
Hayley Goodson	2004	3.50	\$190.00	\$665.00
Hayley Goodson	2005	3.25	\$190.00	\$617.50
Hayley Goodson	2006	83.75	\$195.00	\$16,331.25
Hayley Goodson (comp.)	2006	0.25	\$97.50	\$24.38
Hayley Goodson	2007	435.75	\$210.00	\$91,507.50
Hayley Goodson (comp.)	2007	22.50	\$105.00	\$2,362.50
Hayley Goodson	2008	37.50	\$280.00	\$10,500.00
Hayley Goodson (comp.)	2008	43.50	\$140.00	\$6,090.00
<b>Hayley Goodson Total:</b>				<b>\$128,193.13</b>
Marcel Hawiger	2003	2.75	\$250.00	\$687.50
Marcel Hawiger	2004	3.75	\$250.00	\$937.50
Marcel Hawiger	2006	102.50	\$280.00	\$28,700.00
Marcel Hawiger	2007	222.50	\$300.00	\$66,750.00
Marcel Hawiger (comp.)	2007	1.50	\$150.00	\$225.00
Marcel Hawiger	2008	1.25	\$300.00	\$375.00
Marcel Hawiger (comp.)	2008	10.25	\$150.00	\$1,537.50
<b>Marcel Hawiger Total:</b>				<b>\$99,212.50</b>
Robert Finkelstein	2006	0.50	\$405.00	\$202.50
Robert Finkelstein	2007	1.75	\$435.00	\$761.25
Robert Finkelstein (comp.)	2007	0.50	\$217.50	\$108.75
<b>Robert Finkelstein Total:</b>				<b>\$1,072.50</b>
Michel Florio	2006	0.50	\$485.00	\$242.50
Michel Florio	2007	1.50	\$520.00	\$780.00
<b>Michel Florio Total:</b>				<b>\$1,022.50</b>
<b>Attorney Subtotal:</b>				<b>\$229,500.63</b>
<b>Expert Witness Fees<sup>74</sup></b>				

<sup>74</sup> In TURN's tables on p. 66 of the Request, expert witness hours are combined with the travel time. In our award we correct this deficiency by separating travel time into a separate category. We remind TURN that it is not appropriate to combine, in the request, travel hours with hours spent working on the merits of the proceeding. In itemizing the request, travel should be included as a separate category. In addition, requested travel hours should be based on the actual time spent on travels. It is not

*Footnote continued on next page*

<b>Energy Economics, Inc.</b>				
Cynthia K. Mitchell	2005	4.75	\$140.00	\$665.00
Cynthia K. Mitchell	2006	431.00	\$140.00	\$60,340.00
Cynthia K. Mitchell	2007	540.75	\$140.00	\$75,705.00
Cynthia K. Mitchell	2008	10.00	\$140.00	\$1,400.00
<b>Cynthia K. Mitchell Total:</b>				<b>\$138,110.00</b>
<b>JBS Energy</b>				
Bill Marcus	2006	34.33	\$220.00	\$7,552.60
Bill Marcus	2007	46.33	\$220.00	\$10,192.60
<b>Bill Marcus Total:</b>				<b>\$17,745.20</b>
Gayatri Schilberg	2007	0.68	\$175.00	<b>\$119.00</b>
<b>Expert Witness Subtotal:</b>				<b>\$155,974.20</b>
<b>Direct Expenses</b>				
Photocopying				\$1,148.90
Telephone				\$262.23
Legal Research (Lexis)				\$16.51
Parking/Tolls (Consultant)				\$210.05
Consultant Travel				\$1,572.60
Consultant Lodging				\$1,323.31
<b>Direct Expenses Subtotal:</b>				<b>\$4,533.60</b>
<b>TOTAL REQUEST:</b>				<b>\$390,008.43</b>

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 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 Contributions**

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

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appropriate to reduce the travel time by half while charging it at the full professional rate. The appropriate way to request travel time is to first, separate travel hours from the professional time; second, show the actual travel time and third, charge that time at a half of the professional rate, in accordance with our practices.

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. The hourly breakdown reasonably supports the claim. TURN identifies the issues<sup>75</sup> where it contributed but does not indicate a percentage of its time spent on each issue.<sup>76</sup>

TURN includes in its request work done prior to the commencement of this proceeding. TURN states that in search of common ground regarding energy efficiency incentives it began meetings with DRA and NRDC<sup>77</sup> long before the formal institution of this rulemaking in April of 2006.<sup>78</sup> The provisions of Rule 17.4(d) of the Commission Rules of Practice and Procedure allow us to compensate intervenors for work done in anticipation of a proceeding. We compensate intervenors for such work if it contributed to the final order of the Commission.<sup>79</sup> Here TURN claims compensation for work performed in 2003,

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<sup>75</sup> D.98-04-059, p. 47.

<sup>76</sup> TURN identifies 11 major issues to which it claims contributions, but does not provide in its request a percentage of the time spent on each issue. The Request only provides this information for sub-issues in two of the major issue categories (Request, pp. 70-71).

<sup>77</sup> NRDC has not requested compensation for its time spent prior to the commencement of this proceeding.

<sup>78</sup> TURN's Request, p. 62.

<sup>79</sup> For example, in R.04-01-025, pre-filing meetings and discussions resulted in an agreement that became the basis of the utility's proposed capacity acquisition process in R.04-01-025, and we awarded compensation for that work (D.05-05-046, p. 7), D.08-03-010 granted compensation for settlement discussions that occurred four months in advance of application filing (D.08-03-010 in A.07-03-012, p. 5). There, prior to the

*Footnote continued on next page*

2004, and August of 2005. We find that the link from that input to the subject decisions is too tenuous to be viewed as costs of participation in this proceeding; and we disallow the claimed hours and costs incurred prior to the commencement of this proceeding.

TURN seeks compensation for participation in PAGs and PRGs and provided information<sup>80</sup> required by D.07-11-024. TURN retained outside consultant Cynthia Mitchell to do the bulk of PAG and PRG work and avoided incurring expenses by having a single person attend the meetings of the utilities' PAGs and PRGs and using teleconference to participate (only four meetings out of twenty attended in person) in these groups.

TURN includes in the request for compensation a limited number of hours it incurred in assisting the Commission in its oversight of the 2006-2008 programs. For instance, TURN was a presenter at Commissioner Grueneich's May 29, 2006 All-Party Meeting on 2006-2008 Program. We find that including these hours is reasonable in light of TURN's role at the meeting, and the apparent connection between the theme of the meeting with the assigned commissioner and D.07-09-043 and ongoing 2006-2008 portfolio activities in this proceeding.

Although TURN normally is effective in utilizing its resources, we note a few areas of concerns. For example, we note that more than 70% of attorney

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filing of its application and the settlement, PG&E opened a dialogue with interested parties to explore the possibility of settling some or all of the issues. TURN was extremely active in those negotiations resulting in the settlement agreement adopted in D.07-09-045.

<sup>80</sup> TURN's Request, p. 56.

Hayley Goodson's timesheet entries include various forms of interactions (discussions, meetings, email exchange, reviews of notes, etc.) with other members of TURN's team, mostly with consultant Cynthia Mitchell. While internal communications are important, the high frequency of such interactions in this case raises concerns about the effectiveness of the attorney's work and possible duplication of the team members' efforts. We believe that reducing Hayley Goodson's attorney time spent on issues of the proceeding by 10% should, to some extent, cure the excessiveness of the time spent on internal communications, and we adjust her time accordingly.

We also note that a few of the attorneys and experts timesheet entries<sup>81</sup> include clerical and administrative tasks that the Commission does not compensate. Since these tasks are combined with professional work, it is impossible to figure out how much time should be disallowed for the clerical tasks. Fortunately, the examples of this type are relatively rare. We realize that clerical and administrative tasks take but a mere fraction of the time spent on the professional tasks. We, however, remind TURN that first, the Commission does not compensate clerical and administrative tasks since they are considered to be overhead included in professional hourly rates and second, combining several different types of activities into one timesheet entry violates the provisions of Rule 17.4(b)(2).

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<sup>81</sup> Hayley Goodson's timesheet for July 21 and 22 of 2007 (sending materials to DRA, CKM [Cynthia Mitchell]); Marcel Hawiger's timesheet for April 23 and May 21, 2007 (sending materials), Cynthia Mitchell's timesheet for June 6 and 7, 2006 (distributing or emailing materials) are just a few examples of this practice.

Furthermore, TURN seeks compensation for 78.5 hours devoted to the preparation of NOI and this compensation request.<sup>82</sup> TURN explains that the hours included were necessary in light of the magnitude of work on issues included in this request (three decisions, PAG/PRG work, work implementing a prior decision), the dollar amount needing careful justification, and the Commission's increased expectations regarding the showing intervenors must make in requests for compensation.<sup>83</sup>

We find this argument fails to justify the amount of time spent on these matters. The alleged magnitude of the work could be attributed to the long period of time (two years) embraced by the request, but not to a complexity of the legal issues or a necessity to amass records of numerous attorneys and consultants, which normally makes preparation of the request more difficult. Also, TURN involved experienced attorneys and experts, which should have made preparation of this request simpler and less time consuming.

We note that in the request, TURN does not allocate its time by substantive issues, as we require. In D.85-08-012, the Commission addressed the fact that TURN failed to allocate its hours to specific issues. D.85-08-012 explains that allocation of the time to specific issues involves indicating what percent of the time was spent on each specific issue. In D.98-04-059, the Commission reinforced that requirement by stating that it "... will continue to require allocation of ... time by tasks ... and substantive issues."<sup>84</sup> We also note the

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<sup>82</sup> We authorize recovery for time spent preparing the compensation request at one-half the attorney's hourly rate. (D.96-08-023, 1996 Cal. PUC LEXIS 843, 9-10 (Cal. PUC 1996.)

<sup>83</sup> TURN's Request, footnote 19 on p. 72.

<sup>84</sup> 1985 Cal. PUC LEXIS 652; 18 CPUC2d 485; D.98-04-059, p. 48.

requested amounts are not properly itemized (for example, consultant's time spent on substantive issues of the proceeding is combined with travel hours;<sup>85</sup> and that in some instances timesheets combine attorney or expert work with clerical. TURN spent on the request for compensation more time than on any other document filed in this proceeding, thereby raising concerns about excessive work on matters that bring no benefits to consumers. To achieve a reasonable amount of the intervenor compensation matters time, we reduce the requested hours by two thirds. We note that the resulting number still exceeds the average amount of time the Commission awards for these matters.

TURN seeks compensation for the expert travel time, at one half of the hourly professional rate, and expenses related to this travel. We have held that, absent extenuating circumstances, it is not reasonable to compensate individuals' time and expenses to commute from their homes to attend Commission hearings, or parking expenses.<sup>86</sup> We compensate travel and related expenses if an intervenor's extraordinary travel costs are reasonable and justified, such as might be incurred to attend hearings in another area of the state or to bring in a consultant with special expertise from another part of the country.<sup>87</sup>

In this instance, consultant Cynthia Mitchell travelled from her office in Reno, Nevada, on numerous occasions, to attend PAG/PRG, workshops, and all-party meetings. Expert William Marcus traveled to San Francisco from the

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<sup>85</sup> See, Request tables on pp. 65-66, consultant time combines substantive matters and travel. See, also, Bill Marcus' timesheet entries, for example, of June 1, 2007 ("travel to and attend hearing") (Appendix B to Request).

<sup>86</sup> D.07-05-043, p. 15.

<sup>87</sup> D.07-04-010, p. 12.

offices in West Sacramento, California to attend workshops and hearings. TURN submits that Mitchell's and Marcus's travel should be deemed "extraordinary" and compensable rather than "routine commuting" that might be considered an overhead expense presumably reflected in his hourly rate.<sup>88</sup>

In D.07-05-037, we held, as follows:

Absent extenuating circumstances, ratepayers should not have to bear the cost of individuals' commute from their homes to attend Commission hearings [footnote omitted]. We will continue to pay for travel required for hearings outside of San Francisco and to bring in experts from out the area where such expertise is not available locally." See D07-05-037, p. 11 (*slip op.*).

More recently, we stated:

TURN seeks compensation for more than \$ 4,700 in travel expenses for its consultant, Mitchell, to commute to and from her home in Reno, Nevada. Those expenses include air fare, meals, cab rides and hotels for meetings in San Francisco. It is not reasonable for ratepayers to assume the costs of normal commute to and from an employee's place of business. We are willing to reimburse the expenses of an out-of-town consultant who has special expertise not available locally for work on discrete issues. We have no reason to assume Mitchell has those qualifications or that the work she conducted is so specialized. The costs of commuting are presumed to be covered in the consultant rates we award, just as they would be for any consultant or attorney. We do reimburse travel to and from meetings outside the Bay Area. D.08-04-022, p. 23.

We conclude that Mitchell's trips to and from San Francisco and San Ramon (Contra Costa County) constituted routine commuting and are not compensable. Therefore, we disallow the hours and costs associated with such travels. We will

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<sup>88</sup> *Id.*

allow, however, travel time and most of the expenses associated with Mitchell’s participation in HVAC PAG meeting in Long Beach on January 15-16, 2007, since that meeting was outside the Bay Area.<sup>89</sup> We trust TURN that personal attendance of its representative was required at that meeting.

We use the same approach towards TURN’s expert Marcus’ trips between West Sacramento and San Francisco. Because his travel-related timesheet entries combine several activities<sup>90</sup> (travel, attending a meeting, preparing for the meeting, etc.), we need to estimate his travel time. We assign two hours for one-way travel to San Francisco, and we adjust William Marcus’ hours, accordingly.

## 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.

We previously adopted hourly rates for TURN’s attorneys and consultants, as follows:

Name	Year	Hourly Rate	Decision Adopting Hourly Rate
Hayley Goodson	2003	\$190	D.04-12-033
Hayley Goodson	2004	\$190	D.04-12-033
Hayley Goodson	2005	\$190	D.06-02-016
Hayley Goodson	2006	\$195	D.07-05-018
Hayley Goodson	2007	\$210	D.07-12-026
Marcel Hawiger	2003	\$250	D.04-05-048
Marcel Hawiger	2004	\$250	D.05-01-007
Marcel Hawiger	2006	\$280	D.06-10-018
Marcel Hawiger	2007	\$300	D.07-11-033

<sup>89</sup> See, Request, pp. 56 and 77, and Appendix B to Request, p. 8.

<sup>90</sup> See, Marcus’ timesheet, May 25 and June 27, 2006, and June 1, 2007.

Marcel Hawiger	2008	\$300	D.08-06-044
Robert Finkelstein	2006	\$405	D.06-10-018
Robert Finkelstein	2007	\$435	D.07-11-033
Michel Florio	2006	\$485	D.06-11-032
Michel Florio	2007	\$520	D.08-03-012
Cynthia Mitchell	2005	\$140	D.06-02-016
Cynthia Mitchell	2006	\$140	D.07-12-026
Bill Marcus	2006	\$220	D.07-05-018
Bill Marcus	2007	\$220	D.08-01-038
Gayatri Schilberg	2007	\$175	D.08-04-014

We confirm these rates here.

For work performed in 2008 by Hayley Goodson, TURN seeks the rate of \$280. 2008 was her fifth year of the related attorney experience. In D.08-04-010, the Commission adopted a rate range of \$280 to \$300 for attorneys with five to seven years of experience,<sup>91</sup> and we approve the requested rate pursuant to the provisions of D.08-04-010.<sup>92</sup> For Mitchell's work in 2007 and 2008, TURN asks us to apply and we here approve the rate of \$140 that the Commission already adopted for Mitchell's work in 2006.

### **5.3. Direct Expenses**

TURN's direct expenses total \$4,533.60. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. The photocopying expenses relate exclusively to the preparation and service of TURN's pleadings. Considering that TURN filed more than forty documents, submitted testimony and exhibits, and made presentations at the meetings, the claimed copying expenses are reasonable.

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<sup>91</sup> D.08-04-010, p. 5.

<sup>92</sup> D.08-04-010, p. 8.

Other reasonable expenses include computerized legal research costs, and expenses associated with telephone and facsimile communication

TURN also requests travel expenses consisting of airfare, transportation and parking expenses, and lodging.<sup>93</sup> As explained in Section 5.1, we disallow expenses related to Mitchell and Marcus' routine travels. We do allow most of the travel expenses associated with a PAG/PRG HVAC meeting in Long Beach. We notice, however, that although the meeting took place on January 16, 2007 (see, table on p. 56 of the request; Appendix B to the Request, p. 8), expenses associated with the meeting (airfare, hotel, taxi) were all incurred on July 17, 2006 (see, Appendix C to the Request, p. 3), six months prior to the actual trip. We assume that the discrepancy in dates the result of a simple error. We trust TURN that these expenses indeed related to its January 16, 2007 participation in the Long Beach PAG/PRG meeting. We grant these expenses, except for one of the two sums paid for the hotel: TURN fails to explain why there are two charges for just one day of lodging and we disallow the lesser amount of \$71.77.

With the exception of the travel expenses described above, we find TURN's direct expenses reasonable.

We request that TURN in its future claims provide accurate information (or clarification of inconsistent information), to avoid disallowance for inaccurately recorded expenses.

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<sup>93</sup> We note that consultant's travel expenses incurred on July 17, 2006, include airfare, airport parking, and taxi expenses; however, there is no timesheet entry associated with that travel.

## 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. (D.98-04-059, pp. 34-35.) This showing assists us in determining the overall reasonableness of the request.

TURN points to precise monetary benefits from its contributions to D.07-09-043. TURN's technical analysis concerning supply-side comparability, TURN's policy position on capping total earnings and TURN's advocacy of the upper cap limit potentially saved ratepayers \$50-100 million over three years for the combined utilities. TURN's analysis concerning the use of CT costs in the model by itself reduced comparable earnings by about 10%.<sup>94</sup> Assuming a midpoint of the earnings range of \$600 million, this means that TURN's calculation reduced the lower bound of the earnings range by approximately \$60 million. Since the Commission adopted the low end of the earnings range as the cap on earnings, TURN's analysis directly contributed to lowering the amount of benefits allocated to shareholders. Furthermore, the August 9, 2007 PD proposed a cap on earnings of \$500 million.<sup>95</sup> TURN was the only party that recommended that the cap be lowered to \$450 million, the lower end of the earnings range, to reflect reduced risk for the utility. The final decision adopted a cap of \$450 million.

In addition to these specific monetary benefits, TURN's contributions to this proceeding resulted in benefits that are difficult to quantify. TURN's

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<sup>94</sup> D.07-09-043, p. 101, fn. 174.

<sup>95</sup> Proposed Decision, August 9, 2007, p. 109.

contributions to D.07-10-032, D.08-01-042, the PAG/PRG Process, the implementation of D.06-06-063, and ongoing activities relating to EM&V and the 2006-2008 EE portfolios were directed primarily at policy matters. We agree with TURN that the establishment of energy efficiency policies has a direct and lasting impact on customer rates. TURN’s efforts throughout this proceeding have focused on ensuring that the Commission’s energy efficiency policies dramatically increase the amount of incremental electric and gas demand that will be met through energy efficiency investments in the next ten years as cost-effectively and strategically as possible. TURN has successfully advocated policies that will improve the quality of data used in energy efficiency program planning and program measurement, thus increasing the reliability of energy efficiency as an energy resource in procurement planning. Procurement costs can be a major driver of utility outlays and retail rates and appropriate energy efficiency (and integrated resource planning) policies and prudent planning practices can be essential to maintaining low and stable rates. TURN’s contributions will promote long-term rate stability, reduce risks to ratepayers and contribute to resource diversity that should help to mitigate the impact of future market dysfunction. Finally, with regard to TURN’s contributions to D.08-01-042, TURN’s success at improving the accuracy of *ex ante* data inputs that the utilities must use in their interim claims will mitigate the risk that ratepayers will pay shareholder incentives for energy savings.

**7. Award**

As set forth in the table below, we award TURN \$358,258.75:

Name	Year	Hours	Hourly Rate	Total
<b>Work on Issues of the Proceeding Attorney Fees</b>				
Hayley Goodson	2006	75.38	\$195.00	\$14,699.10

Hayley Goodson	2007	392.18	\$210.00	\$82,357.80
Hayley Goodson	2008	33.75	\$280.00	\$9,450.00
<b>Hayley Goodson Subtotal:</b>		<b>501.31</b>		<b>\$106,506.90</b>
Marcel Hawiger	2006	102.50	\$280.00	\$28,700.00
Marcel Hawiger	2007	222.50	\$300.00	\$66,750.00
Marcel Hawiger	2008	1.25	\$300.00	\$375.00
<b>Marcel Hawiger Subtotal:</b>		<b>326.25</b>		<b>\$95,825.00</b>
Robert Finkelstein	2006	0.50	\$405.00	\$202.50
Robert Finkelstein	2007	1.75	\$435.00	\$761.25
<b>Robert Finkelstein Total:</b>		<b><u>2.25</u></b>		<b>\$963.75</b>
Michel Florio	2006	0.50	\$485.00	\$242.50
Michel Florio	2007	1.50	\$520.00	\$780.00
<b>Michel Florio Subtotal:</b>		<b><u>2.00</u></b>		<b>\$1,022.50</b>
<b><u>Attorney Subtotal:</u></b>				<b><u>\$204,318.15</u></b>
<b>Expert Witness Fees</b>				
<b>Energy Economics, Inc.</b>				
Cynthia K. Mitchell	2006	408.75	\$140.00	\$57,225.00
Cynthia K. Mitchell	2007	518.00	\$140.00	\$72,520.00
Cynthia K. Mitchell	2008	10.00	\$140.00	\$1,400.00
<b>Cynthia K. Mitchell Total:</b>		<b>936.75</b>		<b>\$131,145.00</b>
<b>JBS Energy</b>				
Bill Marcus	2006	30.33	\$220.00	\$6,672.60
Bill Marcus	2007	44.33	\$220.00	\$9,752.60
<b>Bill Marcus Subtotal:</b>				<b>\$16,425.20</b>
<b>Gayatri Schilberg Subtotal:</b>	2007	0.68	\$175.00	<b>\$119.00</b>
<b><u>Expert Witness Subtotal:</u></b>				<b><u>\$147,689.20</u></b>
<b>Work on Intervenor Compensation (Icomp.) Matters</b>				
Hayley Goodson (comp.)	2006	0.08	\$97.50	\$7.80
Hayley Goodson (comp.)	2007	7.5	\$105.00	\$787.50
Hayley Goodson (comp.)	2008	14.5	\$140.00	\$2,030.00
Marcel Hawiger (comp.)	2007	0.5	\$150.00	\$75.00
Marcel Hawiger (comp.)	2008	3.4	\$150.00	\$510.00
Robert Finkelstein (comp.)	2007	0.2	\$217.50	\$43.50
<b><u>Icomp. matters Subtotal:</u></b>		<b><u>26.2</u></b>		<b><u>\$3,453.80</u></b>
<b>Travel</b>				
Mitchell travel 2007		11.00	\$70.00	\$770.00
<b>Direct Expenses</b>				
<b>Item</b>				<b>Amount</b>
Photocopying				\$1,148.90
Telephone				\$262.23
Legal Research (Lexis)				\$16.51
Cons. Travel (airfare/transportation)				\$467.70
Taxi				\$8.00
Lodging				\$124.26
<b>Direct Expenses Subtotal:</b>				<b>\$2,027.60</b>
<b>TOTAL AWARD:</b>				<b>\$358,258.75</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 June 15, 2008, the 75<sup>th</sup> 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) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

**9. Assignment of Proceeding**

Commissioner Dian M. Grueneich is the assigned Commissioner, and ALJ David M. Gamson 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. TURN made a substantial contribution to D.07-09-043, D.07-10-032 and D.08-01-042 as described herein.

2. TURN made a substantial contribution to PRGs and PAGs as described herein.

3. TURN requested hourly rates for its representatives that were approved in the Commission's prior decision and/or are reasonable when compared to the market rates for persons with similar training and experience.

4. TURN requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$358,258.75.

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, as adjusted herein, incurred in making substantial contributions to D.07-09-043, D.07-10-032, D.08-01-042 and PRGs and PAGs.

2. TURN should be awarded \$358,258.75 for its contribution to D.07-09-043, D.07-10-032, D.08-01-042 and PRGs and PAGs.

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 \$358,258.75 as compensation for its substantial contributions to Decision (D.) 07-09-043, D.07-10-032, D.08-01-042, and Peer Review Groups and Program Advisory Groups.

2. Within 30 days of the effective date of this decision Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company and Pacific Gas and Electric Company shall pay TURN the award granted herein in shares proportional to their 2007 revenues. 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 on June 15, 2008, the 75<sup>th</sup> day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. This proceeding remains open to address remaining issues of the proceeding.

This order is effective today.

Dated March 26, 2009, 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>	D0903045	<b>Modifies Decision?</b>
<b>Contribution Decision(s):</b>	D07-09-043, D07-10-032, D08-01-042, PRGs, PAGs	
<b>Proceeding(s):</b>	R06-04-010	
<b>Author:</b>	ALJ David Gamson	
<b>Payer(s):</b>	Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company and Pacific Gas and Electric 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	4/1/2008	\$390,008.43	\$358,258.75	No	Excessive hours; non-compensable expenses (travel)

**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>
Hayley	Goodson	Attorney	The Utility Reform Network (TURN)	\$190	2003	\$190
Hayley	Goodson	Attorney	TURN	\$190	2004	\$190
Hayley	Goodson	Attorney	TURN	\$190	2005	\$190
Hayley	Goodson	Attorney	TURN	\$195	2006	\$195
Hayley	Goodson	Attorney	TURN	\$210	2007	\$210
Hayley	Goodson	Attorney	TURN	\$280	2008	\$280
Marcel	Hawiger	Attorney	TURN	\$250	2003	\$250
Marcel	Hawiger	Attorney	TURN	\$250	2004	\$250

Marcel	Hawiger	Attorney	TURN	\$280	2006	\$280
Marcel	Hawiger	Attorney	TURN	\$300	2007	\$300
Marcel	Hawiger	Attorney	TURN	\$300	2008	\$300
Robert	Finkelstein	Attorney	TURN	\$405	2006	\$405
Robert	Finkelstein	Attorney	TURN	\$435	2007	\$435
Michel	Florio	Attorney	TURN	\$485	2006	\$485
Michel	Florio	Attorney	TURN	\$520	2007	\$520
Cynthia	Mitchell	Expert	TURN	\$140	2005	\$140
Cynthia	Mitchell	Expert	TURN	\$140	2006	\$140
Cynthia	Mitchell	Expert	TURN	\$140	2007	\$140
Cynthia	Mitchell	Expert	TURN	\$140	2008	\$140
William	Marcus	Expert	TURN	\$220	2006	\$220
William	Marcus	Expert	TURN	\$220	2007	\$220
Gayatri	Schilberg	Expert	TURN	\$175	2007	\$175

**(END OF APPENDIX)**