

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 13, 2006

Agenda ID #5835
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 01-09-001 AND
INVESTIGATION 01-09-002

This is the draft decision of Administrative Law Judge (ALJ) Thomas. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3, opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ Thomas at srt@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand-delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's website, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 7/13/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 02-10-020,
D.03-10-088, D.04-02-063, D.04-07-036 AND D.04-09-061**

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**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 02-10-020,
D.03-10-088, D.04-02-063, D.04-07-036 AND D.04-09-061**

This decision awards The Utility Reform Network (TURN) \$519,012.49 in compensation for its contributions to Decision (D.) 02-10-020, D.03-10-088, D.04-02-063, D.04-07-036 and D.04-09-061. This amount is \$80,924.20 less than TURN requests.¹ We make this reduction because TURN did not prevail on all issues, and because we adopt lower hourly rates than requested for three of TURN's experts. TURN's request for compensation is uncontested. This proceeding is closed.

I. Background

TURN seeks compensation for its contributions to the decisions issued in the Commission's New Regulatory Framework (NRF) proceeding for Pacific Bell (Pacific)² and Verizon California (Verizon). The five subject NRF decisions address an audit of Pacific's and Verizon's financial results for 1997-99, and the companies' service quality for the twelve years after the Commission adopted NRF. Because of the complexity of the proceeding, it was bifurcated into phases. The decisions for which TURN now seeks compensation arose from Phases 1, 2A

¹ In the course of preparing a supplement to its compensation request, TURN discovered that its request for compensation had inadvertently included hours for an expert witness's work despite TURN's intent to exclude all such hours from the Request for Compensation. The appropriate adjustment would reduce the hours for Gayatri Schilberg of JBS Energy by 39.5 hours in 2002, and 8.1 hours in 2003, for a total reduction of \$6,269.00. Thus, while TURN's initial request was for \$606,205.69, we have revised that request downward to (\$606,205.69 minus \$6,269.00, or \$599,936.69).

² Pacific is now known by its d.b.a., AT&T. We use the Pacific name throughout this decision.

and 2B of the proceeding. D.06-05-024 closed these proceedings. A brief description of each decision for which TURN seeks compensation follows.

A. D.02-10-020

In D.02-10-020, the Commission addressed 144 issues arising from the audit of Verizon that was conducted by the Commission's Office of Ratepayer Advocates (ORA).³ The parties, including TURN, resolved most of the issues in a stipulation that was approved by D.02-10-020 in accordance with Rule 51.1(e) of our Rules of Practice and Procedure (Rules).

B. D.03-10-088

In D.03-10-088 the Commission evaluated and made findings on the quality of Verizon's and Pacific's service to telephone customers for the period 1990, when NRF became effective,⁴ to the time of the hearing in 2002.

C. D.04-02-063

Decision 04-02-063 addressed four of 72 issues arising from an audit of Pacific's financial performance in 1997-99. These four issues pertained to (1) pensions; (2) post-retirement benefits other than pensions (PBOPs); (3) write down of plant assets; and (4) income taxes.

D. D.04-07-036

In D.04-07-036, the Commission granted an application for rehearing filed by TURN and ORA regarding certain evidence the Assigned Commissioner's office admitted into the record after the hearings were concluded.

³ The Office of Ratepayer Advocates became the Division of Ratepayer Advocates, effective January 1, 2006, pursuant to Senate Bill 608. We use the name ORA throughout this decision.

⁴ D.89-10-031, 1989 Cal. PUC LEXIS 576, 33 CPUC 2d 43 (1989), 107 PUR 4th 1 (1989).

E. D.04-09-061

In D.04-09-061, the Commission addressed the remaining 68 issues raised in the audit of Pacific's financial results for 1997-99.

II. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-12, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor 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. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times 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 should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 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 contentions or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are reasonable and are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

III. Procedural Issues

The prehearing conference in this matter was held on March 6, 2002. TURN timely filed its NOI on April 5, 2002. In its NOI, TURN asserted financial hardship. On April 30, 2002, Administrative Law Judge (ALJ) Kenney ruled that TURN is a customer pursuant to § 1802(b)(1)(C), and met the financial hardship condition, pursuant to § 1804(b)(1), through a rebuttable presumption of eligibility because TURN met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated December 29, 2000, in Application 00-09-002). TURN filed its request for compensation on November 30, 2004, within the required 60 days of D.04-09-061 being issued.⁵

While TURN did not file its request within 60 days of the previous decisions, TURN's actions were proper because the intervenor compensation statute does not require a request for compensation until 60 days after the final decision in a proceeding. This case has recently been closed (D.06-05-024); however, TURN's request is permissible under Rule 76.72 of our Rules of Practice and Procedure. It would also be more difficult for TURN financially, and for the Commission logistically, to wait until the proceeding finally closes to deal with compensation issues. We prefer to rule on the compensation claims

⁵ No party opposes the request. ORA supports the request.

TURN has accrued thus far, and to handle future claims when TURN submits them. We find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

IV. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ (*e.g.*, in a Proposed Decision (PD), *see* D.04-02-018) or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) 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.⁶

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the

⁶ D.98-04-059, 79 CPUC 2d 628, 653 (1998).

decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.⁷ This rule is important for TURN here, as we discuss below.

With this guidance in mind, we turn to the contributions TURN claims it made to each of the five subject decisions.

A. D.02-10-020

In D.02-10-020, the Commission addressed 144 issues arising from the audit of Verizon conducted by ORA.⁸ The parties, including TURN, resolved most of the issues in a stipulation that was approved by D.02-10-020 in accordance with Rule 51.1(e).⁹ Among other things, the stipulation required Verizon to (1) implement new procedures to ensure proper regulatory accounting for affiliate transactions and unregulated activities, and (2) submit restated financial reports reflecting many of the financial adjustments identified in the audit report.

⁷ See D.03-12-019, discussing D.89-03-063 (31 CPUC 2d 402 (1989)) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved); D.03-12-035 (awarding compensation where Commission did not adopt intervenor's position, but where intervenor's participation was reflected in alternate decisions).

⁸ D.02-10-020, *mimeo.*, p. 6.

⁹ *Id.*, *mimeo.*, pp. 6, 7 and 13. D.02-10-020 adopted the stipulation except on procedural issues. Specifically, D.02-10-020 moved the issue of service quality monitoring reports to Phase 3 of the proceeding, rather than Phase 2 as suggested in the stipulation.

Two sets of issues in ORA's audit report were unresolved. The first set concerned Verizon's relationship with its affiliate responsible for publishing white page and yellow page directories.¹⁰ The Commission agreed with TURN that the imputation of the affiliate's excessive directory earnings for ratemaking purposes is consistent with Federal Communications Commission (FCC) regulations. The Commission also agreed with TURN that Pub. Util. Code § 728.2 requires the Commission to consider directory earnings when setting rates for telephone service.¹¹ Finally, the Commission agreed with TURN regarding an investigation of whether revenues from electronic directories should be imputed for ratemaking purposes and directed ORA to examine this issue in its next audit of Verizon.¹²

The second set of contested issues pertained to what rules should apply to transactions between Verizon and its affiliates. TURN opposed all of Verizon's proposed rules and these rules were rejected by D.02-10-020.¹³ While D.02-10-020 declined to adopt ORA's proposal to reduce Verizon's rates for failure to comply with existing rules, the decision agreed with TURN that the Commission has the discretion to order such rate reductions.¹⁴ The decision also concurred with TURN that Verizon's failure to comply with the Commission's rules placed

¹⁰ D.02-10-020, *mimeo.*, p. 28.

¹¹ *Id.* at 18-19 and Conclusion of Law (COL) 8.

¹² *Id.* at 30-31.

¹³ *Id.* at 34-35.

¹⁴ *Id.* at 51.

ratepayers at some risk of harm.¹⁵ Additionally, D.02-10-020 agreed with TURN that audits are an integral part of NRF, and that a thorough audit of Verizon (rather than the “focused” audit sought by the utility) should begin for the period 1999-2002.¹⁶

In its October 19, 2005, supplement to the request, TURN claimed that it had prevailed on all issues it litigated in connection with D.02-10-020. This is not actually correct. TURN acknowledges that the Commission did not adopt its recommendations to make Verizon’s earnings subject to refund, but asserts that it nonetheless “prevailed” because the Commission found it has the discretion to order rate reductions and deferred the refund issue to Phase 3 of this proceeding. Given that the Commission rejected a refund, TURN did not prevail on this issue. TURN’s request attributes \$32,028.33 to this “ratemaking authority” issue. We disallow this amount.

In sum, we find that, with the exception of time related to the ratemaking authority issue, TURN made a substantial contribution to D.02-10-020, both on the issues covered by the stipulation adopted by the decision and on the disputed issues resolved by the decision.

B. D.03-10-088

In D.03-10-088 the Commission evaluated and made findings on the quality of Verizon’s and Pacific’s service to telephone customers for the period 1990, when NRF became effective, to the time of the hearing in 2002.

¹⁵ *Id.* at 53 and COL 27.

¹⁶ *Id.* at 54-58 and COL 41.

1. TURN's Assertions

a. Claims Adopted in PD, But Not in Commission Decision

TURN claims it is entitled to compensation for all of its service quality hours even though in many instances only the PD, and not the final Commission decision, adopted TURN's position. TURN concedes that "it is not unusual for a commissioner's alternate to result in a dramatically different outcome than set forth in the ALJ's proposed decision." However, TURN notes, "on service quality issues, not only did the Commission reach a very different outcome, but it did so by making very substantial changes to the manner in which the underlying issues were considered and analyzed." TURN continues, "[t]he final decision largely bypassed TURN's analysis (as well as the analysis of the other active parties, including Pacific and Verizon) in favor of a statistical analysis that surprised all of the active parties (and delighted half of them)."

Despite the difference in methodology, TURN asserts that it made a substantial contribution to D.03-10-088. TURN also claims that it is entitled to compensation because the PD embraced a large proportion of its analysis and resulting recommendations.

TURN gives several examples of claims the PD adopted and the Commission rejected. First, with respect to installation issues, TURN alleged that Pacific had allowed its staffing levels to drop to inadequate levels during the NRF period, with adverse consequences for service quality thereafter. The PD found problems with Pacific's installation performance showing its response time for repairs worse in 2000 as compared to 1994.

Second, the PD concluded that Pacific's answer time performance demonstrated problems, and relied on TURN's analysis of raw data obtained from Pacific as support for the conclusion on some of these difficulties.

Third, TURN raised concerns regarding the manner in which Pacific deployed advanced services and the resulting threat that such deployment would create two classes of customers – the “haves” and “have nots” – with disparate levels of service quality. The PD found merit in TURN’s concerns, particularly to the extent that Pacific’s Digital Subscriber Line (DSL) services may fail to benefit all customers equally. The final decision relied on the Commission’s own experience, suggesting that it is geology, rather than socio-economic status, that dictates deployment of advanced services, as it is “the economically exclusive hillside homes in Northern and Southern California where advanced services such as DSL have proved problematic to deploy.”¹⁷ The final decision also noted that the issue would likely be addressed in R.03-04-003, the broadband rulemaking.

Fourth, TURN’s testimony and briefs pointed out that on certain installation measures Verizon had shown a pattern of both worsening and improving performance. Verizon countered that a certain amount of variability of performance was to be expected. The PD disagreed with Verizon’s defense and instead concluded that Verizon’s installation intervals were problematic. The final decision determined that statistically the variations were insignificant.

On the subject of Verizon’s repair performance, TURN presented considerable testimony on Verizon’s worsening repair intervals through 2001. Verizon sought to counter that testimony by relying on 2002 repair data. However, the PD agreed with TURN that the more recent data was problematic due to Verizon’s attempt to annualize repair data from just the first three months

¹⁷ *Id.* at 162.

of 2002. The PD echoed TURN's concern with the deterioration in Verizon's repair intervals in 2000 and 2001.

b. Claims Adopted in Commission Decision

TURN also lists several issues on which the Commission's adopted decision, D.03-10-088, accepted TURN's recommendations in whole or part. In these instances, claims TURN, its work is compensable. First, on the question of accuracy of the carriers' reported service quality results, the Commission agreed with TURN's concerns that Pacific's elimination of billing calls in its Business Office Answer Time (BOAT)¹⁸ statistics part-way through the period analyzed made it impossible to compare Pacific's reported BOAT performance over time.¹⁹

Second, the Commission agreed with TURN that General Order (GO) 133-B²⁰ does not require tracking of calls to the telephone company met with a busy signal, or calls the caller did not complete (abandoned calls), thus creating the risk of missing a key indicator of poor customer service.²¹ The Commission ultimately decided that GO 133-B was an inadequate measuring tool and should be amended.

Third, during the course of the proceeding, ALJ Thomas granted TURN's motion to have Pacific continue reporting certain service quality data required by the FCC that initially were reported only for a limited period. Because of the

¹⁸ BOAT results are an important indication of service quality, because they measure how long it takes customers to reach a service representative when seeking telephone service.

¹⁹ D.03-10-088, *mimeo.*, pp. 48-50.

²⁰ GO 133-B tracks several measures of telephone company service quality.

²¹ D.03-10-088, *mimeo.*, p. 18.

value of the data, the Commission specifically ratified ALJ Thomas' ruling granting TURN's request.²²

Fourth, TURN addressed whether NRF provided incentives for poor service quality. TURN acknowledges that only the PD, and not the Alternate Decision the Commission ultimately adopted, agrees with some of TURN's concerns. Nonetheless, TURN points out that D.03-10-088 analyzes the issue of NRF incentives for service quality as opposed to those that existed under the previous, cost of service, scheme of regulation.²³ Thus, although the Commission did not adopt TURN's position on the merits, the Commission did accept TURN's premise that it was appropriate to inquire whether NRF provided perverse incentives to the utility regarding service quality.

Fifth, TURN also cited several other Commission decisions in enforcement proceedings to support its claim that customers experienced diminished service from Pacific after NRF was enacted. The Commission agreed with TURN that such information was relevant to the analysis in this proceeding. Further, the Commission acknowledged TURN's assertion that the pace of meritorious complaints against Pacific increased after 1995, and that at minimum NRF did not prevent these problems from developing.²⁴ The final decision found that

²² *Id.* at 121.

²³ *Id.* at 177-180.

²⁴ *Id.* at 152-58.

these complaints did not raise concerns about the success of NRF in the service quality area, but invited parties to further address the matter in Phase 3B.²⁵

c. Claims Adopted Neither in PD Nor in Commission Decision

On October 19, 2005, TURN submitted a supplement to its compensation request listing the issues on which it did not prevail either in the PD or the adopted Commission decision. These claims total \$16,445.92, and are further explained in the following discussion section.

2. Discussion

a. Issues on Which PD and Commission Decision Agree

TURN is clearly entitled to compensation for positions the Commission adopted in its final decision. TURN lists five such issues, as noted above.

b. Issues on Which PD and Commission Decision Diverge

The more challenging question relates to TURN's advocacy that produced results in the ALJ's PD, but which the Commission did not adopt in its final decision. There is no question that TURN's analysis contributed substantially to the ALJ's PD. We also agree that the approach in the Commission's adopted decision is different from both the PD and all other parties. This difference introduces an important question: If an intervenor such as TURN proceeds in a manner on which all parties – and the ALJ – agree, is the intervenor entitled to compensation, should the Commission ultimately decide to adopt a different approach?

(1) Precedent Allowing Compensation

²⁵ The Commission has since decided not to pursue Phase 3B (D.06-05-024), but instead to examine its regulation of the telecommunications industry in another proceeding, R.05-04-005.

We have long held that contribution to an ALJ's PD (or to a Commissioner's Alternate Decision not adopted by the Commission) is evidence of a substantial contribution even if the Commission does not adopt the PD's recommendations: "The Commission adopted TURN's position only in part, but the Administrative Law Judge's (ALJ's) PD had recommended TURN's position without reservation. In cases where the Commission does not wholly adopt the customer's position, contribution to an ALJ's PD reinforces a substantial contribution to an order or decision."²⁶

The Commission has also held that if TURN's advocacy "clearly furthered the debate, as evidenced by references to it in the PD, even though the final decision rejected TURN's recommendations," the Commission may find a substantial contribution. For example, in D.96-08-023, the Commission found TURN eligible for all time on issues adopted either by the ALJ or the Commission, where TURN's contribution "furthered the debate":

Further, TURN's positions on the treatment of hazardous wastes in revenue allocation and the level of cost-based interruptible credits were adopted in the ALJ's proposed decision (PD), only to be ultimately rejected by the full Commission. TURN's unique testimony on these issues clearly furthered the debate, as evidenced by references to it in the PD, even though the final decision rejected TURN's recommendations. Moreover, these issues represent a relatively small component of TURN's extensive participation in this proceeding, which covered virtually all marginal cost, revenue allocation, and (for residential and small commercial) rate design issues. As we have confirmed in the past:

"In cases where the Commission does not wholly adopt the customer's position, contribution to an ALJ's

²⁶ D.92-08-030, *mimeo.*, p. 4, 45 CPUC 2d 273, 1992 Cal. PUC LEXIS 555, at *4.

proposed decision reinforces a substantial contribution to an order or decision.”²⁷

The Commission only denied compensation related to recommendations adopted neither in the PD or the final decision, but awarded compensation where the PD adopted the intervenor’s positions.²⁸

Similarly, in D.96-09-024, the Commission found TURN eligible for compensation on issues where only the ALJ or the Commissioner sponsoring an Alternate Decision adopted TURN’s positions, and the Commission ultimately rejected those positions: “This reinforcement of TURN’s substantial contribution is also applicable in the instant case, since on some issues where TURN’s position was ultimately rejected by the Commission, this position was adopted either in the ALJ’s proposed decision or the [Commissioner’s] Alternate.”²⁹

Thus, Commission precedent clearly supports awarding TURN compensation related to positions adopted by the PD even if the Commission rejects those positions. While there is one case suggesting that the degree of

²⁷ D.96-08-023, *mimeo.*, p. 4, 67 CPUC 2d 286, 1996 Cal. PUC LEXIS 843, at *5, citing D.95-05-003, *mimeo.*, p. 6 and D.92-08-030, *mimeo.*, p. 4.

²⁸ 1996 Cal. PUC LEXIS 843, at *6.

²⁹ D.96-09-024, *mimeo.*, p. 19, 67 CPUC 2d 678, 1996 Cal. PUC LEXIS 891, at *19; *see also* D.99-11-006, *mimeo.*, pp. 9-10, 1999 Cal. PUC LEXIS 657, at *14 (an intervenor may make a substantial contribution when an ALJ’s proposed decision adopts the party’s position, but the Commission declines to adopt the party’s position in full in its final decision; citing D.99-04-004 and D.96-08-023). Even where the Commission does not consider an issue the ALJ’s proposed decision adopts, rendering the issue moot, the Commission has awarded compensation due to the contribution to the ALJ’s decision (or a Commissioner’s alternate decision). D.01-06-063, *mimeo.*, pp. 6-7, 2001 Cal. PUC LEXIS 610, at *8.

divergence between the two versions has bearing on this conclusion,³⁰ the other cases cited above do not make this distinction. While D.96-08-023 noted that the issues on which the PD and the Commission's decision "represent a relatively small component of TURN's extensive participation in this proceeding,"³¹ the Commission only rejected compensation for time spent on issues where TURN contributed neither to the PD nor the Commission's decision. We already disallow this time in a separate discussion below.

Moreover, in granting TURN compensation for advocacy that contributed to the ALJ's PD, the Commission in D.96-08-023 cited with approval the general principle that "in cases where the Commission does not wholly adopt the customer's position, contribution to an ALJ's proposed decision reinforces a substantial contribution to an order or decision." Finally, nothing in the Commission's findings, conclusions, or order in D.96-08-023 limited an intervenor's award for contributions to a PD only to cases where the PD differs in only minor ways from the Commission decision. Thus, D.96-08-023 does not establish a general principle disallowing full recovery except where the PD and Commission decision differ only in minor ways. Given the unique circumstances of this case, as described herein, TURN should receive compensation for all effort on the service quality issue.

(2) Intent of Statute to Encourage Participation

The legislative intent of the intervenor compensation statute supports awarding TURN compensation where it contributed to the PD, the Commission

³⁰ See D.96-08-023, discussed on the previous page.

³¹ 1996 Cal. PUC LEXIS 843, at *5.

decision, or both. Section 1801.3(b) requires that the provisions of the statute “be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” If an intervenor knows that its compensation award is at risk in the event the Commission proceeds with an approach that differs from that taken at and after hearing, it may choose not to participate at all. Here, the ALJ’s PD followed the parties’ briefing outline and the parties’ analytical approach to the case. The decision the Commission ultimately adopted was based on a statistical analysis the Commission conducted on its own after hearings and briefings were over.

Further, the change between the adopted Commission decision and the ALJ’s approach was not attributable to TURN’s conduct. All parties who filed briefs on the service quality issue – including Pacific Bell and Verizon – followed the same briefing outline as TURN. Each party discussed and agreed upon the briefing outline beforehand. The ALJ used the same outline in the PD. Thus, all parties proceeded with a similar understanding of how to analyze the evidence.

Of course it is true that individual Commissioners and the Commission as a whole may choose lines of reasoning and analytical perspectives that are partly or entirely unanticipated by the parties. This reality of Commission decision making is one reason why the Commission has generally recognized substantial contribution on the basis of adoption of an intervenor’s position in a PD or Commissioner’s Alternate Decision, regardless of whether the PD or Alternate is ultimately adopted.

Here, neither TURN nor any of the other parties could have anticipated when making their presentations that the Commission would adopt a different approach. Indeed, in D.04-07-036, the Commission granted partial rehearing of a portion of D.03-10-088, the decision for which TURN seeks compensation here,

because the latter decision relied on new evidence and analysis presented after hearings and briefing were over.³² The Commission noted in granting rehearing that, “[t]he proposed alternate decision included results of statistical analyses performed by Commission staff on data that was not introduced into the evidentiary record during the hearing.” Noting that in D.03-10-088 we had accepted four new items of evidence into the record without holding evidentiary hearings, we concluded that, “After reconsideration, we agree with applicants that evidentiary hearings are appropriate in this case for the four new items of evidence”³³ Thus, even the Commission agreed that TURN did not have an opportunity to address the Commission’s statistical approach until after D.03-10-088 was issued.

In summary, TURN could not have anticipated the Commission’s change in approach, and should not be penalized for following the roadmap set out for it during and after hearing. To deny TURN compensation under these special circumstances would discourage intervenor participation, contrary to the express legislative intent.

(3) Intervenor’s Efforts Persuade Neither ALJ Nor Commission

In its October 19, 2005, supplement, TURN listed items on which it did not persuade the ALJ, the Assigned Commissioner, or the Commission itself. We disallow compensation for those items, as follows.

Issue	Amount
Verizon's TRSAT improved after Pacific-SBC merger decision	\$3,654.65

³² We discuss D.04-07-036 in more detail below.

³³ D.04-07-036, *mimeo.*, p. 7, 2004 Cal. PUC LEXIS 337, at *12-13.

Verizon's BOAT affected by understaffing	\$3,654.65
Pacific refused pole test & treat funds to PG&E --cost cutting	\$5,481.97 ³⁴
Incentive to increase revenues led to cutback in free services	\$3,654.65
Total disallowance	\$16,445.92

In the supplement, TURN claims that it is inappropriate to disallow compensation for the foregoing items. It cites earlier compensation awards in which the Commission granted compensation even where TURN did not prevail because the Commission's deliberations were enhanced by TURN's arguments and analysis.³⁵ TURN therefore claims that it should recover compensation for such time here.

We agree that we have required TURN to present a more granular request for compensation here than we may have in other cases. In its October 19, 2005, supplement, for example, TURN added 11 pages of detailed discussion of sub-issues in each NRF decision to the more than 50 pages of discussion it had already submitted. Nothing in this decision should be construed to require TURN in the future to break down its contribution to a Commission decision into minute sub-issues.

However, unique circumstances were present here. As noted in detail above, the Commission changed direction significantly between the time the ALJs issued their draft decisions and the Commission finalized its work on the decisions. Especially in the area of Pacific's service quality, the PD and final decisions were highly distinguishable. Under these circumstances, we find it

³⁴ None of the decisions addressed this issue, and we therefore disallow compensation for it.

³⁵ TURN cites D.03-04-011, *mimeo.*, p. 16, and D.02-06-070, 2002 Cal. PUC LEXIS 375, at *29-31.

was correct for the ALJ to seek supplementation. Moreover, we do not find that TURN should be compensated for issues on which it clearly did not prevail.

C. D.04-02-063

Decision 04-02-063 addressed four of 72 issues arising from an audit of Pacific that was overseen by the Commission's Telecommunications Division. These four issues are (1) pensions; (2) post-retirement benefits other than pensions (PBOPs); (3) write-down of plant assets; and (4) income taxes. The remaining 68 issues were addressed in D.04-09-061. TURN addressed the pensions, PBOPs, and plant write-down issues, but not income taxes.

With respect to pensions, TURN contended that the transfer of surplus pension assets to Pacific was inconsistent with Commission precedent and unjustly enriched Pacific by \$41 million. The Commission agreed, citing with favor TURN's arguments in explaining the resolution of this issue.³⁶

TURN addressed two PBOP issues. The first concerned Pacific's write-off of its \$400 million PBOP regulatory asset in 1998. TURN argued that the write-off exceeded what was allowed by Commission precedent and accounting standards. TURN also questioned the propriety of the write-off in light of Pacific's failure to disclose in 1998 its intent to write off the entire PBOP regulatory asset if the Commission adopted certain courses of action advocated by Pacific.³⁷ The ALJ's PD agreed with TURN, but the Assigned Commissioner's alternate PD adopted by the Commission accepted Pacific's contentions.

³⁶ D.04-02-063, *mimeo.*, pp. 23-27 and COLs 11 and 12.

³⁷ *Id.* at 38-40.

The second PBOP issue concerned Pacific's withdrawal of \$180 million from the Voluntary Employee Benefit Association (VEBA) Trust No. 1 in December 1999 to reimburse itself for active employees' health care costs that Pacific paid earlier in 1999. The audit concluded that the withdrawal violated D.92-12-015 and, as a result, Pacific should refund \$136 million (the intrastate regulated portion of the \$180 million) to ratepayers. TURN supported the audit recommendation with arguments about (1) the adverse effect the withdrawal had on ratepayers, and (2) the consistency of the recommendation with D.92-12-015 and D.91-07-006.³⁸ The Commission agreed with TURN's reasoning, but instead of a refund to ratepayers, required Pacific to return \$136 million, plus interest, to the VEBA 1 trust.³⁹

Finally, with respect to the plant write-down, TURN supported the audit recommendation that it was inappropriate for Pacific to write down \$4.8 billion of plant assets over a six-year period beginning in 1999. TURN argued that Pacific was not authorized by D.98-10-026 to implement the write-down.⁴⁰ The Commission disagreed, and held that D.98-10-026 did provide Pacific with authority to implement the write-down.⁴¹ Thus, TURN did not prevail on this issue. While the Commission agreed with TURN that should an earnings sharing mechanism be reinstated in the future, it would be appropriate to reconsider Pacific's authority under D.98-10-026 to implement plant

³⁸ *Id.* at 60-61.

³⁹ *Id.* at 64-66.

⁴⁰ *Id.* at 87-89.

⁴¹ *Id.* at 91.

write-downs, this is at best deferral of the issue.⁴² In its October 19, 2005, supplement, TURN attributed \$22,012.32 to this “depreciation reserve deficiency” issue, and we disallow this amount.

In sum, we find that TURN made a substantial contribution to D.04-02-063 as described above. We disallow \$22,012.32 for TURN’s work where it did not prevail.

D. D.04-07-036

In D.04-07-036, the Commission granted an application for rehearing filed by TURN and ORA regarding certain statistical analysis evidence the Assigned Commissioner admitted into the record after the hearings were concluded. TURN and ORA generally opposed setting aside submission to add such material to the record. TURN argued that if submission were set aside, the Commission should also allow submission of other material, including a statistical analysis covering a different period. The Commission set aside submission and allowed the material in the record requested by the Assigned Commissioner, but not the material TURN requested.

TURN joined with ORA in seeking rehearing on the treatment of this post-hearing evidence. In D.04-07-036, the Commission granted rehearing on several points, including the need for hearings on the four specific items the Assigned Commissioner sought to add to the record, and the opportunity for TURN to offer a different statistical analysis to compare to the analysis performed in preparing the Commissioner’s Alternate Decision.

⁴² *Id.* at 95.

Given our grant of TURN's application for rehearing, we find that TURN made a substantial contribution to D.04-07-036.

E. D.04-09-061

In D.04-09-061, the Commission addressed the remaining 68 issues (51 contested) raised in the audit of Pacific's financial results for the period 1997-99. Of the contested issues, the ALJ's PD sustained the audit on 48 and reversed the audit on three. TURN's participation focused on a subset of the 51 contested issues. The PD found in TURN's favor on a majority of the subset issues, the initial Alternate Decision did so on some, and the final decision adopted a smaller number of TURN's recommendations. However, in many instances the Commission reached TURN's proposed result, but did so based on a different analysis (while acknowledging and discussing TURN's approach). In some instances, the Commission discussed TURN's analysis, but came out the other way. And in many instances, either the PD or the original Alternate Decision adopted TURN's approach. In all of these cases, we find TURN eligible for compensation, as discussed below.

Where the final decision adopted TURN's position, TURN is clearly entitled to compensation. For example, the audit questioned the allocation from SBC (Pacific's parent company) to Pacific of certain legal fees having no apparent bearing on regulated activities. The Commission agreed that these expenses should be disallowed based largely on TURN's arguments regarding the company's failure to meet its own standard.⁴³

⁴³ *Id.* at 91.

In other instances, the final decision adopted TURN's proposed outcome, but used different reasoning. In these situations, TURN's reasoning complemented or supplemented the Commission's analysis. For example, the Commission denied Pacific's request to recover the full cost of the audit from its customers, estimated at over \$2 million. This was the same outcome TURN advocated, but the Commission used different reasoning. TURN focused on how audits are a part of doing business for a company such as Pacific, and argued that this made the associated costs ineligible for exogenous cost recovery. The Commission denied recovery based largely on the utility's failure to cooperate sufficiently with the audit.⁴⁴

With regard to the contingent liability issue, the Commission adopted TURN's proposed outcome by denying Pacific recovery, but rejected TURN's analysis. The auditors recommended a downward expense adjustment for contingent liabilities associated with anticipated expenses related to lawsuits and regulatory proceedings, basing their recommendation largely on Pacific's refusal to disclose its reasoning behind the accruals due to the utility's concerns regarding the attorney-client privilege. The PD adopted TURN's claims. While the final decision ultimately found that the privilege applied, it still reduced the contingent liability accruals as TURN had requested since Pacific's failure to provide the requested information left the Commission unable to verify the accuracy of the claimed amounts.⁴⁵

⁴⁴ *Id.* at 135.

⁴⁵ *Id.* at 22.

Similarly, a key issue was whether audit adjustments that would not affect revenue sharing when viewed in isolation were “material” for purposes of the audit. Both the PD and Alternate Decision adopted the principle advocated by TURN that when revenue sharing is in effect, a reduction in the amount of net revenues shared with ratepayers constitutes a form of economic harm. Applying that principle, the PD and the Alternate Decision agreed with TURN that the cumulative impact of a number of small adjustments made each of those adjustments “material” even if it might not have been if viewed in isolation. The final decision largely eliminated all discussion on this issue, but retained the principle when it left to ORA the question of the materiality threshold scope for the next audit.⁴⁶

As is the case with D.03-10-088, TURN also claims it is entitled to compensation because the PD and the original version of the Alternate Decision accepted TURN’s analysis and recommendations. For example, TURN focused on the appropriateness of regulatory asset treatment for two categories of costs—local number portability (LNP) and local competition implementation costs. The PD accepted TURN’s analysis of whether and when Pacific should have established a regulatory asset. While the final decision opted for Pacific’s approach on LNP, it adopted TURN’s position on a related issue—jurisdictional separation. Similarly, with regard to several other issues—cash working capital, time reporting, and transfer of Pacific’s customer database to affiliates—the PD largely tracked the evidence TURN developed in hearings, but the final decision disagreed.

⁴⁶ D.04-09-061, *mimeo.*, p. 132.

In its supplement dated October 19, 2005, TURN listed the following issues on which it did not prevail in D.04-09-061:

Issue	TURN pleadings	Amount
Affiliate Transactions – ASI	OB 37-38, RB 31-33	\$5,142.02
Recovery of Audit Costs	OB 43-44, RB 37-38	\$4,113.61
Total disallowance		\$9,255.63

We disallow recovery of these amounts.

For the reasons set forth above with regard to D.03-10-088, we find that TURN contributed to D.04-09-061 in all but a few instances itemized above. The decision frequently adopts TURN’s position or approves TURN’s analysis. Where it does not adopt TURN’s position, TURN’s comprehensive participation in the hearings assisted the Commission in developing the record or framing the issues, and thus contributed to the PD and to a lesser extent the final decision. Overall, we find that TURN made a substantial contribution to D.04-09-061. For the reasons described in connection with D.03-10-088, we disallow recovery for the issues on which TURN did not prevail, as noted above. These items total \$9,255.63.

V. Reasonableness of Requested Compensation

After we have determined the scope of a customer’s substantial contribution, we then look at whether the compensation requested is reasonable. TURN requests \$599,936.69⁴⁷ for its participation in this proceeding, as follows:

Attorney/Advocate Fees

⁴⁷ Note that this is the corrected total reflected in TURN’s October 19, 2005, supplement.

	Year	Hours	Rate	
James Anthony	2001	220.5	\$190.00	\$41,895.00
	2002	607.5	\$205.00	\$124,537.50
	2002 (comp)	3	\$102.50	\$307.50
Robert Finkelstein	2001	5	\$310.00	\$1,550.00
	2002	330.25	\$340.00	\$112,285.00
	2003	93.25	\$365.00	\$34,036.25
	2004	9.5	\$395.00	\$3,752.50
	2004 (comp)	22	\$197.50	\$4,345.00
William Nusbaum	2003	300.5	\$340.00	\$102,170.00
	2004	17.5	\$365.00	\$6,387.50
Christine Mailloux	2001	2.75	\$250.00	\$687.50
	2002	3	\$275.00	\$825.00
Regina Costa	2001	26.25	\$180.00	\$4,725.00
	2002	45.75	\$200.00	\$9,150.00
	2003	15.85	\$215.00	\$3,407.75
	2004	0.25	\$230.00	\$57.50
Hayley Goodson	2002	96.5	\$95.00	\$9,167.50
Mark Barmore	2004	38.75	\$125.00	\$4,843.75
			Subtotal	\$464,130.25

Expert Witness Fees and Expenses**JBS ENERGY**

Gayatri Schilberg	2001	26.42	\$130.00	\$3,434.60
	2002	529.93	\$130.00	\$68,890.90
	2003	93.96	\$140.00	\$13,154.40
Deduction due to error in original request (see October 19, 2005 supplement)			<6,269.00>	
William Marcus	2002	0.5	\$175.00	\$87.50
Ron Faubion	2002	4	\$50.00	\$200.00
JBS Expenses				\$429.69
			Subtotal	\$79,928.09

MURRAY & CRATTY

Terry Murray	54.75	\$325.00	\$17,793.75
Scott Cratty	55.7	\$200.00	\$11,140.00
Elizabeth Kientzle	4	\$200.00	\$800.00
		Subtotal	\$29,733.75

EXETER ASSOCIATES

Tom Catlin	28	\$160.00	\$4,480.00
Lafayette Morgan	108	\$105.00	\$11,340.00
		Subtotal	\$15,820.00

Other Reasonable Costs

Photocopying			\$6,615.57
Postage			\$297.29
Attorney travel			\$20.00
Fax			\$100.20
Federal Express			\$226.28

Lexis			\$1,789.36
Phone			\$927.86
Miscellaneous			\$348.04
		Subtotal	\$10,311.85
		TOTAL	\$599,936.69

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. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation. The issues we consider to determine reasonableness are discussed below.

A. Productivity

To assist us in determining the reasonableness of the requested compensation, 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 their participation. This showing assists us in determining the overall reasonableness of the request.

TURN notes that many of its arguments had a direct impact on the regulated operating expenses of the utilities (*e.g.*, the VEBA 1 Trust issue and reported PBOP costs), although we will not know the full extent of the financial impact on many of these until we conclude subsequent proceedings. The VEBA 1 issue from Phase 2A resulted in a redirection to the trust of approximately \$136 million. This money will now be used for the purposes originally ordered by the Commission. On this issue alone, TURN's participation was productive, given that the total amount of compensation sought is a fraction of the outcome on this issue.

On many other issues, TURN's contribution does not lend itself to such "monetization" (for example, enhancements to data gathering and ongoing reporting requirements for service quality). The Commission has previously recognized the overall benefit of TURN's participation where that participation assisted the Commission in developing a record on which to assess the reasonableness of the utility's operations, and particularly its preparedness and performance in the future.⁴⁸ TURN asserts that a similar determination is appropriate here though it is difficult to put a dollar figure on the benefits from TURN's participation. We agree that TURN's efforts were productive based on its overall results, both quantifiable and non-quantifiable.

**B. Hours and Costs Related to and Necessary
for Substantial Contribution**

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. 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 for total hours.⁴⁹ Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings

⁴⁸ D.99-12-005, *mimeo.*, pp. 6-7 (1995 Storm Phase of PG&E GRC A.97-12-020); D.00-04-006, *mimeo.*, pp. 9-10 (Edison PBR Midterm Review A.99-03-020).

⁴⁹ TURN separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

TURN made, we agree that TURN's hours are commensurate with its contributions in the proceeding.

C. Market Rate Standard and Related Expenses

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. We find, with minor exceptions, that TURN's requested rates are reasonable, as we discuss below.

1. TURN's Staff

a. James Anthony

TURN seeks an hourly rate of \$190 for work performed by Attorney Anthony in 2001. The Commission has previously approved this rate for work performed by Anthony in 2001, and we find this rate reasonable.⁵⁰

This is the first Request for Compensation in which TURN seeks an hourly rate for work performed by Anthony in 2002. TURN requests a 2002 rate of \$205, an increase of 8% over 2001. TURN cites Resolution ALJ-184, issued on August 19, 2004.⁵¹ TURN notes that Resolution ALJ-184 was issued nearly two years after the period for which TURN is seeking to establish an hourly rate. The resolution states the Commission will consider an 8% increase presumptively reasonable for purposes of escalating 2003 hourly rates to cover work performed in 2004. It is reasonable here to use this approach, and we approve the 2002 rate of \$205/hour.

⁵⁰ D.02-04-013, *mimeo.*, p. 10.

⁵¹ An 8% increase to Anthony's 2001 hourly rate of \$190 yields an hourly rate of \$205.20. TURN has rounded that figure to the nearest \$5 increment.

b. Robert Finkelstein

TURN requests an hourly rate of \$310 for Attorney Finkelstein's work in 2001, \$340 for 2002, \$365 for 2003, and \$395 for 2004. The Commission previously has approved these same rates for Finkelstein, using the hourly rates requested for the years 2001-03, and we find these rates reasonable.⁵²

c. William Nusbaum

TURN requests an hourly rate of \$340 for Attorney Nusbaum's work in 2003 and \$365 for 2004. We adopted these rates in D.04-12-054 and D.05-04-014, respectively, and find them reasonable here. Because D.04-12-054 did not set out Nusbaum's credentials in detail, and they may be necessary to assess future requests for compensation, we set them forth here.

Nusbaum is a 1976 graduate of New England School of Law and is a member of the California and District of Columbia bars. He also earned an MBA from the University of San Francisco in 1998. He has over 25 years telecommunications experience in both legal and business strategy positions.

As Assistant General Counsel for the National Association of Regulatory Utility Commissioners (NARUC) from 1977 to 1979, Nusbaum represented the interests of the state regulatory commissions before Federal agencies, courts and Congress on public utility law and telecommunications, energy and transportation issues. In that capacity, he worked closely with counsel from the CPUC. From 1979 to 1982 he served as a Communications Policy Specialist in the Office of Policy Analysis and Development at the National Telecommunications and Information Administration (NTIA) where he was

⁵² D.02-06-070, *mimeo.*, p. 21 (2001 rate); D.03-01-074, *mimeo.*, p. 7 (2002 rate); D.03-08-041, *mimeo.*, p. 7 (2003 rate); D.05-03-016 (2004 rate).

responsible for identifying and developing Executive Branch telecommunications policy recommendations directed towards the FCC, courts, Congress and states. He also served as NTIA's principal liaison to the state regulatory commissions. From 1982 to 1984, Nusbaum served as telecommunications counsel for Bank of America where he provided regulatory, legislative, judicial and contract representation to the Bank's telecommunications, electronic banking, and investment banking departments. He also chaired the California Bankers Clearinghouse Association's Telecommunications Policy Committee where he helped manage the banks' participation in rate cases before the CPUC.

In 1984, Nusbaum began working at Pacific Telesis (now SBC) in the office of Corporate Strategy. He held numerous senior level positions for the next thirteen years both at the holding company (Pacific Telesis) and the operating company (Pacific Bell). In these positions, he was involved in major strategic issues from a public policy and a business perspective. In addition, he managed initiatives including the spin-off of AirTouch Communications, the Pacific Telesis Group's wireless business, and the sale of Bellcore (now Telcordia Technologies), the \$1B telecommunications software and professional services company jointly owned by the Regional Bell Holding Companies. In the late 1990s and early 2000s, Nusbaum worked as a management consultant, first with Deloitte Consulting and then on an independent basis where he advised senior management of telecommunications companies, as well as numerous Internet and broadband start-ups.

In January 2003, Nusbaum joined TURN's staff as Senior Telecommunications Attorney. Since his arrival at TURN, Nusbaum has assumed lead responsibility for a number of substantial proceedings, including

not only this proceeding, but also the Triennial Review Order phase of R.95-04-043, and the Voice Over Internet Protocol investigation (I.04-02-007).

d. Christine Mailloux

TURN seeks an hourly rate of \$250 and of \$275 for Attorney Mailloux in 2001 and 2002, respectively. The Commission has previously approved these rates for work performed by Mailloux in 2001 and 2002,⁵³ and we find these rates reasonable.

e. Hayley Goodson

TURN is seeking an hourly rate of \$95 for work performed by Goodson in 2002. During this time, Goodson was a law student. She performed research on tax flow-through and service quality issues, and assisted with TURN's participation in the Phase 2B service quality hearings, including cross-examining witnesses. This rate previously was approved in D.03-05-065, and we find it reasonable here.

f. Regina Costa

TURN requests an hourly rate of \$180 for work policy expert Costa performed in 2001, \$200 for work in 2002, \$215 for work in 2003, and \$230 for work in 2004. We previously approved these rates for Costa, and find them reasonable here.⁵⁴ Because D.04-12-054 did not set out Costa's credentials in detail, and they may be necessary to assess future requests for compensation, we set them forth here.

⁵³ D.03-01-074 and D.03-05-027 (2001); D.03-07-014 and D.04-02-014 (2002).

⁵⁴ D.01-08-011 and D.04-09-017 (2001); D.01-08-011, D.03-05-027 and D.03-07-014 (2002); D.04-02-014 (2003); and D.04-12-054 (2004).

Costa received a Bachelor of Arts degree in Communication from Simon Fraser University, Burnaby, British Columbia, in 1984 and an MA Degree from that same university in 1989. She has worked in the telecommunications field for nearly 20 years. From 1984 to 1985, she was a telecommunications analyst in the Litigation Support Department of MCI Communications, Inc. From 1985 to 1987, she was a teaching and research assistant in the Department of Communication, Simon Fraser University, lecturing in and preparing courses on North American telecommunication policy and regulation. During this period, she worked on reports commissioned by the Government of Canada analyzing communication regulatory and policy issues. She was also employed by the British Columbia Public Interest Advocacy Centre (BCPIAC) to assist with their participation in telecommunications hearings before the Canadian Radio-television and Telecommunications Commission (CRTC).

From 1985 through 1988, she was research assistant to Professor William H. Melody, in his capacity as Director of the Programme on Information and Communication Technology (PICT) of the Economic and Social Research Council in Great Britain and Visiting Senior Fellow at St. Antony's College, Oxford. During this time, she also worked for Dr. Robin Mansell, Head of the Centre for Information and Communication Technologies at the Science Policy Research Unit at the University of Sussex. They prepared a report commissioned by the Organization for Economic Cooperation and Development (OECD) analyzing telecommunication policies and rates among OECD member nations.

From January 1989 to August 1991, Costa was employed by the Washington Utilities and Transportation Commission (WUTC) as a Policy Research Specialist. Her duties included drafting Commission comments in an FCC proceeding and the National Telecommunications and Information

Administration (NTIA) Notice of Inquiry on the future of the national telecommunications infrastructure, as well as serving as staff lead on open network architecture tariff proposals and telephone company rate restructuring cases. She also lectured on the “Principles, History and Economics of Public Utility Regulation” at the April, 1990 National Association of Regulatory Utility Commissioners (NARUC) Introductory Training Course in San Francisco.

In late 1991, Costa joined TURN’s staff. Since 1993, she has served on the telecommunications subcommittee of the National Association of State Utility Consumer Advocates (NASUCA), of which TURN is a member. The committee is responsible for analyzing telecommunication issues, such as universal service, and drafting NASUCA’s comments on such issues to Congress and the FCC. She has authored NASUCA resolutions pertaining to DSL service, cost allocation, and open access to telecommunications networks. As a member of the telecommunications committee, she has prepared comments for FCC proceedings pertaining to issues such as telecommunications cost studies, universal service, and carrier access charge reform. She has organized and participated in numerous NASUCA panel sessions, making presentations on issues such as price cap regulation, local competition for telecommunications services, universal service and service quality. She was invited to present testimony before the FCC regarding the SBC/Ameritech merger. Most recently, she was invited to testify before the Federal-State Joint Board on Universal Service with regard to the Rural Task Force Report on Universal Service. She has testified before the California legislature on proposals to extend telecommunications service to rural areas and on telephone number conservation issues.

g. Mark Barmore

TURN seeks an hourly rate of \$125 for Attorney Barmore's work in 2004. TURN engaged Barmore to prepare its compensation requests for this and other proceedings. We typically determine that compensation request preparation does not require attorney qualifications and therefore normally reduce the rate by 50%. TURN states that it would not be appropriate for the Commission to apply the typical 50% reduction to the relatively low \$125 rate it now seeks for Barmore. We previously agreed with that assertion in D.04-12-054, and we accept it here.

h. TURN's Expenses

TURN seeks to recover related miscellaneous expenses of \$10,324.60 for photocopying, postage, delivery costs, and the preparation and distribution of TURN's testimony, briefs, pleadings and other documents and correspondence in the case.

We recognize the photocopying costs are higher than typical for the level of participation in this proceeding, due to TURN's reliance on outside copying firms to handle production of service quality testimony and supporting documents. The telephone and facsimile charges are exclusive to this proceeding. TURN also incurred related legal database research costs.

Overall, we find that TURN's costs are reasonable, were necessarily incurred to enable TURN to participate in this proceeding, and should be compensated in full.

2. TURN's Outside Experts**a. JBS Energy, Inc.**

TURN seeks to recover \$86,197.09 in related fees and expenses of JBS Energy, Inc., which worked on service quality issues.

(1) Gayatri Schilberg

TURN requests an hourly rate of \$130 for work Gayatri Schilberg performed in 2002, and \$140 for 2003. These rates previously were approved for Schilberg and we adopt them here.⁵⁵

(2) William Marcus

TURN requests an hourly rate of \$175 for work William Marcus performed in 2002. This rate was previously approved and we adopt it here.⁵⁶

(3) Ron Faubion

TURN requests an hourly rate of \$50 for work Ron Faubion performed in 2002. The Commission previously approved an hourly rate of \$45 for Faubion's work in 1998 and 1999 as an analyst.⁵⁷ However, in D.01-06-076,⁵⁸ we disallowed recovery for Faubion's time for failure to demonstrate whether his work was other than clerical in nature. Clerical time is normally considered as overhead built into substantive experts' rates.

In this case, we have examined the entry for Faubion's time (four hours total) and find that the work was more than clerical. Faubion worked on "tally[ing] CPUC Service Quality failure reports by type of interruption." This is substantive work, and we therefore grant TURN's request, at the \$50/hour rate. In the future, TURN shall more fully document this type of work and experience in order to justify compensation.

⁵⁵ D.02-11-017, *mimeo.*, p. 9 (2002 rate); D.05-06-031 (2003 rate).

⁵⁶ D.02-11-020, *mimeo.*, pp. 7-8, D.03-04-011.

⁵⁷ D.00-09-068.

⁵⁸ 2001 Cal. PUC LEXIS 603, § 6.3.3.

TURN has supported all of the hourly rates it seeks for JBS Energy's individual participants, and we grant them without modification.

(4) JBS Expenses

TURN also seeks recovery of the \$429.69 in related expenses JBS Energy incurred.⁵⁹ These expenses include facsimile costs, expedited delivery fees, mileage, transit fares, tolls, and parking, as well as lodging for one trip to appear during the service quality portion of the Phase 2B hearings. These expenses are directly related to TURN's participation, and we find them reasonable.

b. Murray & Cratty LLC

TURN retained Murray & Cratty LLC, to assist on the service quality issues in Phase 2B, with a small amount of work on more general NRF and audit issues. Murray's service quality testimony focused on TURN's concerns that the deployment of advanced services would result in an inappropriate distinction in the quality of service received by those with access to such advanced services, and by those lacking such access. TURN is seeking compensation for the first time for the Murray & Cratty expert witnesses for work performed in 2002.

(1) Terry Murray

Murray, president of Murray & Cratty, sponsored TURN's testimony on service quality issues and provided general support to TURN's work on related issues. The Commission awarded compensation for Murray's 2001 work on behalf of TURN at \$320 per hour.⁶⁰ TURN seeks compensation for her work, performed entirely in 2002, at an hourly rate of \$325.

⁵⁹ Consistent with JBS' normal billing practice, TURN was billed for only half the time JBS employees spent traveling in relation to this case.

⁶⁰ Approved in D.05-12-038.

Murray is an economist, the former director of the Commission's Division of Ratepayer Advocates (now ORA), and a former Commissioner advisor.⁶¹ Murray has 20 years of experience in her field testifying before this Commission, either for Commission staff or as a consultant for other parties.⁶² In recent years, she has provided expert consulting services in many major telecommunications proceedings before this Commission, as well as other state commissions and the FCC, on behalf of various clients.

TURN therefore asserts that the \$325 per hour rate it now seeks is reasonable because of Murray's increased experience, inflation, and the demand for telecommunications experts. This is too arbitrary a means to increase an award, and we are concerned with the precedent it might set. A prior increase of a certain amount does not necessarily justify an increase in hourly rates without further justification. Therefore, we set Murray's 2002 rate at \$320, the same rate previously adopted for 2001.

(2) Scott Cratty

Cratty is vice president of Murray & Cratty. According to TURN, he supported Murray's testimony through reviewing the utilities' testimony drafting discovery requests and testimony, assisting with hearing preparation and reviewing draft briefs on service quality issues. TURN is requesting

⁶¹ According to TURN, Murray has expertise in NRF-related issues, as she drafted the order that opened the investigation leading to the establishment of NRF. Later, as director of DRA, she oversaw the office's litigation efforts in Phase II of the original NRF investigation.

⁶² D.04-08-020, 2004 Cal. PUC LEXIS 429, at *20-21.

\$200/hour for Cratty's work performed in 2002. The Commission awarded \$185/hour for Cratty's work in 2001.⁶³

Cratty has 20 years experience in telecommunications. He has served as an expert (including testifying expert) in approximately 100 proceedings before more than 20 state and federal regulatory agencies, the majority involving regulation of incumbent local exchange carriers.

As with Murray, TURN did not provide adequate justification to increase Cratty's 2001 rate. Therefore, we adopt a rate of \$185 for work performed in 2002.

(3) Elizabeth Kientzle

Kientzle worked four hours to assist TURN in its initial review of the audit results for Pacific in Phase 2. TURN is requesting a rate of \$200/hour for Kientzle's work in 2002. We previously awarded \$185 for Kientzle's work performed in 2001,⁶⁴ and similar to Murray and Cratty, adopt that rate here for 2002.

c. Exeter Associates

TURN retained the services of Exeter Associates, Inc. (Exeter) to review the audit report and the "shadow audit" performed for ORA, and prepare cross-examination. Exeter provides economic and financial consulting services in the area of public utility regulation, energy, telecommunications and antitrust economics. The firm provides expert testimony and other litigation support in utility regulatory proceedings, as well as antitrust cases and arbitration

⁶³ D.05-12-038.

⁶⁴ D.05-12-038.

proceedings on a variety of matters including traditional ratemaking issues, regulatory restructuring, alternative regulation plans, and other regulatory issues.

(1) Tom Catlin

TURN requests an hourly rate of \$160 for Tom Catlin for work performed in 2002-03. These are the same rates Exeter Associates billed TURN for the firm's work on these matters.

Catlin is a Principal and Vice-President of Exeter. He is a senior utility rate analyst with a combination management and analytical background. His areas of specialization include revenue requirements, cost allocation and rate design. Catlin has nearly thirty years of experience in the review and analysis of the operations of public utilities. The emphasis of this work has been on utility rate regulation and has involved telephone, natural gas, electric, wastewater and storm water companies. Catlin's work in utility rate filings has focused on revenue requirement issues, but has also addressed cost allocation and rate design matters. In addition, Catlin has experience involving affiliate relations, alternate regulatory mechanisms and regulatory restructuring issues. Catlin has provided expert testimony before more than twenty state public utility commissions as well as before the Federal Energy Regulatory Commission.

Catlin holds a B.S. in physics and mathematics from the State University of New York at Stony Brook, and an M.S. in water resources engineering and management from Arizona State University.

TURN asserts that Catlin's training and experience, as well as the services he offers, are very similar to those offered by William Marcus, Principal Economist for JBS Energy. As noted above, the Commission awarded compensation using a \$175 hourly rate for Marcus's work in 2002. For 2003, the

Commission increased that rate to \$185.⁶⁵ TURN states that Catlin's credentials also are comparable to those of Eric Woychik, for whom we approved an hourly rate of \$160 for 2002 work and \$170 for 2003 work.⁶⁶ TURN states that the Commission should find reasonable the \$160 hourly rate that Exeter charged for Catlin's work during 2002 and 2003 based on the comparison to these Commission-approved rates for comparable witnesses during that same time frame. We agree and find the \$160/hour rate for Catlin reasonable.

(2) Lafayette Morgan

TURN seeks \$105 per hour for work Lafayette Morgan performed in 2002 and 2003. Morgan is a Senior Regulatory Consultant with Exeter involved in the analysis of the operations of public utilities with particular emphasis on rate regulation.

Prior to joining Exeter approximately ten years ago, Morgan spent four years as a Senior Financial Analyst with Potomac Electric Power Company (Pepco), where he prepared cost of service, rate base, and ratemaking adjustments supporting the company's request for revenue increases in its retail jurisdictions. Before joining Pepco, Morgan worked for six years as a Staff Accountant with the North Carolina Utilities Commission-Public Staff. He was responsible for analyzing testimony, exhibits, and other data presented by parties before the Commission. In addition, he performed examinations of the books and records of utilities involved in rate proceedings before the North

⁶⁵ D.03-10-011, *mimeo.*, p. 11.

⁶⁶ D.04-08-042, *mimeo.*, p. 19.

Carolina Utilities Commission. Morgan also participated in several policy proceedings involving regulated utilities.

Morgan holds a B.A. in accounting from North Carolina Central University and an M.B.A. in Finance from the George Washington University. Morgan is also a licensed C.P.A. in the State of North Carolina.

TURN states Morgan's training and experience, as well as the services he offers, are very similar to those offered by Jeff Nahigian, Senior Economist for JBS Energy. The Commission has awarded compensation using a \$115 hourly rate for Nahigian's work in 2002 and \$125 for 2003.⁶⁷ TURN asserts that Commission should find reasonable the \$105 hourly rate that Exeter charged for Morgan's work during 2002 and 2003 based on the comparison to these Commission-approved rates for comparable witnesses during that same time frame. We agree and find the \$105/hour rate for Morgan reasonable.

VI. Award

As set forth in the table below, we award TURN \$519,012.49, as follows:

Attorney/Advocate Fees				
	Year	Hours	Rate	
James Anthony	2001	220.5	\$190.00	\$41,895.00
	2002	607.5	\$205.00	\$124,537.50
	2002 (comp)	3	\$102.50	\$307.50
Robert Finkelstein	2001	5	\$310.00	\$1,550.00
	2002	330.25	\$340.00	\$112,285.00
	2003	93.25	\$365.00	\$34,036.25
	2004	9.5	\$395.00	\$3,752.50
	2004 (comp)	22	\$197.50	\$4,345.00
William Nusbaum	2003	300.5	\$340.00	\$102,170.00
	2004	17.5	\$365.00	\$6,387.50
Christine Mailloux	2001	2.75	\$250.00	\$687.50
	2002	3	\$275.00	\$825.00

⁶⁷ We approved the 2001-02 rate of \$115 for Nahigian D.02-11-017, *mimeo.*, p. 9, and the 2003 rate in D.03-10-011, *mimeo.*, p. 11.

Regina Costa	2001	26.25	\$180.00	\$4,725.00
	2002	45.75	\$200.00	\$9,150.00
	2003	15.85	\$215.00	\$3,407.75
	2004	0.25	\$230.00	\$57.50
Hayley Goodson	2002	96.5	\$95.00	\$9,167.50
Mark Barmore	2004	38.75	\$125.00	\$4,843.75
			Subtotal	\$464,130.25

Expert Witness Fees and Expenses**JBS ENERGY**

Gayatri Schilberg	2001	26.42	\$130.00	\$3,434.60
	2002	529.93	\$130.00	\$68,890.90
	2003	93.96	\$140.00	\$13,154.40
Deduction due to error in original request (see October 19, 2005 supplement)				<6,269.00>
William Marcus	2002	0.5	\$175.00	\$87.50
Ron Faubion	2002	4	\$50.00	\$200.00
JBS Expenses				\$429.69
			Subtotal	\$79,928.09

MURRAY & CRATTY

Terry Murray	54.75	\$325.00	\$17,520.00
Scott Cratty	55.7	\$185.00	\$10,304.50
Elizabeth Kientzle (as requested)	4	\$185.00	\$740.00
		Subtotal	\$28,564.50

EXETER ASSOCIATES

Tom Catlin	28	\$160.00	\$4,480.00
Lafayette Morgan	108	\$105.00	\$11,340.00
		Subtotal	\$15,820.00

Other Reasonable Costs

Photocopying			\$6,615.57
Postage			\$297.29
Attorney travel			\$20.00
Fax			\$100.20
Federal Express			\$226.28
Lexis			\$1,789.36
Phone			\$927.86
Miscellaneous			\$348.04
		Subtotal	\$10,311.85
		TOTAL	\$598,754.69

Deductions – Issues on Which TURN Did Not Prevail

Decision	Amount
D.02-10-020	<\$32,028.33>
D.03-10-088	<\$16,445.92>
D.04-02-063	<\$22,012.32>

D.04-09-061	<\$9,255.63>
Subtotal – Disallowances (TURN Did Not Prevail)	<\$79,742.20>

Award

Less Did Not Prevail Deduction	<\$79,742.20>
Total Award	\$519,012.49

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 February 13, 2005, the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

When the Commission awards intervenor compensation in proceedings involving more than one utility, it generally allocates the award based on a measure reflecting the disparate sizes of the utilities involved. For example, in multi-utility electric proceedings we often allocate intervenor compensation awards on the basis of each utility's percentage of the total retail sales of electricity in a given year for the particular utilities.⁶⁸ For Pacific and Verizon in this proceeding, the equivalent measure is each utility's proportional California jurisdictional revenues in 2002 (the year in which TURN incurred the most expense).

We remind all intervenors that Commission staff may audit their records related to this 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,

⁶⁸ See, e.g., D.03-06-065, OP 3.

the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VII. Comments on Draft Decision

This is an intervenor compensation matter and normally the comment period is waived. However, given the magnitude of the award and the disallowances, we will allow 30 days from the mailing date to comment on the draft decision.

VIII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Timothy Kenney and Sarah R. Thomas are the assigned ALJs in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.02-10-020, D.03-10-088, D.04-02-063, D.04-07-036 and D.04-09-061 as described herein.
2. TURN did not prevail on all issues in D.02-10-020, D.03-10-088, D.04-02-063 and D.04-09-061. The total value of the disallowance is \$79,742.20.
3. TURN's requested hourly rates for attorneys and experts (as adjusted in the opinion) are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$519,012.49.
5. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-12, which govern awards of intervenor compensation, and is entitled to intervenor compensation for compensation of reasonable expenses in making substantial contributions to D.02-10-020, D.03-10-088, D.04-02-063, D.04-07-036 and D.04-09-061.

2. TURN should be awarded \$519,012.49 for its contribution to D.02-10-020, D.03-10-088, D.04-02-063, D.04-07-036 and D.04-09-061.

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

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$519,012.49 as compensation for its substantial contributions to Decision (D.) 02-10-020, D.03-10-088, D.04-02-063, D.04-07-036 and D.04-09-061.

2. Within 30 days of the effective date of this decision, Pacific Bell and Verizon California shall pay their respective shares of the award. Each utility's share shall be calculated based on each utility's proportional California jurisdictional revenues in 2002. 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 13, 2005, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. Rulemaking 01-09-001 and Investigation 01-09-002 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0210020, D0310088, D0402063, D0407036 and D0409061	
Proceeding(s):	R0109001, I0109002	
Author:	ALJ Thomas	
Payer(s):	Pacific Bell, Verizon California	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	11/30/04	\$599,936.69	\$519,012.49	No	Did not prevail on certain issues; failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Anthony	Attorney	The Utility Reform Network	\$190	2001	\$190
James	Anthony	Attorney	The Utility Reform Network	\$205	2002	\$205
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365	2003	\$365
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2004	\$395
William	Nusbaum	Attorney	The Utility Reform Network	\$340	2003	\$340
William	Nusbaum	Attorney	The Utility Reform Network	\$365	2004	\$365
Christine	Mailloux	Attorney	The Utility Reform Network	\$250	2001	\$250
Christine	Mailloux	Attorney	The Utility Reform Network	\$275	2002	\$275
Hayley	Goodson	Law Student	The Utility Reform Network	\$95	2002	\$95
Regina	Costa	Policy Expert	The Utility Reform Network	\$180	2001	\$180
Regina	Costa	Policy Expert	The Utility Reform Network	\$200	2002	\$200
Regina	Costa	Policy Expert	The Utility Reform Network	\$215	2003	\$215
Regina	Costa	Policy Expert	The Utility Reform Network	\$230	2004	\$230

Mark	Barmore	Attorney	The Utility Reform Network	\$125	2004	\$125
Gayatri	Schilberg	Economist	The Utility Reform Network	\$130	2002	\$130
Gayatri	Schilberg	Economist	The Utility Reform Network	\$140	2003	\$140
William	Marcus	Economist	The Utility Reform Network	\$175	2002	\$175
Ron	Faubion	Analyst	The Utility Reform Network	\$50	2002	\$50
Terry	Murray	Policy Expert	The Utility Reform Network	\$325	2002	\$320
Scott	Cratty	Policy Expert	The Utility Reform Network	\$200	2002	\$185
Elizabeth	Kientzle	Policy Expert	The Utility Reform Network	\$200	2002	\$185
Tom	Catlin	Policy Expert	The Utility Reform Network	\$160	2002	\$160
Tom	Catlin	Policy Expert	The Utility Reform Network	\$160	2003	\$160
Lafayette	Morgan	Accountant	The Utility Reform Network	\$105	2002	\$105
Lafayette	Morgan	Accountant	The Utility Reform Network	\$105	2003	\$105

(END OF APPENDIX)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated July 13, 2006, at San Francisco, California.

/s/ KE HUANG

Ke Huang

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I0109002

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