

Decision 12-03-053 March 22, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Determine Whether Sharing of Customer Information Between Regulated Water Utilities and Regulated Energy Utilities/Municipal Energy Providers Should be Required; and if so, to Develop the Rules and Procedures Governing Such Sharing.

Rulemaking 09-12-017
(Filed December 17, 2009)

DECISION AWARDING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 11-05-020

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 11-05-020
Claimed: \$14,014.76	Awarded: \$13,000.76 (reduced 7%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: ALJ Division

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: D.11-05-020 creates an information sharing program between Commission-regulated water and energy utilities to increase the participation rates in water low income assistance programs. In addition, this decision creates a set of rules and data sharing guidelines for automatic enrollment into the low income rate assistance programs between the two types of utilities where there is overlapping serving territory.

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

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:	May 3, 2010 ¹	Correct

¹ Pursuant to the Rules of Practice and Procedure 17.1, the Administrative Law Judge (ALJ) has the discretion to set the filing dates for NOIs. In this proceeding, the Order Instituting Rulemaking specified that NOIs should be filed no later than 30 days after the issuance of the scoping memo. The Scoping Memo was issued on April 1, 2010.

3. Date NOI Filed:	April 29, 2010	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	P.10-08-016	Correct
6. Date of ALJ ruling:	November 22, 2010	Correct
7. Based on another CPUC determination (specify):		Yes. A rebuttable presumption pursuant to §1804(b)(1) is applied to TURN's participation here, as a substantive finding on significant financial hardship was issued within a year of the commencement of this proceeding.
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number: ²	P.10-08-016	Correct
10. Date of ALJ ruling:	November 22, 2010	Correct
11. Based on another CPUC determination (specify):	Yes	
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-05-020	Correct
14. Date of Issuance of Final Decision:	May 10, 2011	Correct
15. File date of compensation request:	July 8, 2011	Correct
16. Was the request for compensation timely?		Yes

² To date, no ruling has been issued on TURN's Notice of Intent to Claim Compensation filed in this docket. Therefore, TURN asks that the Commission rely on previous Commission rulings to demonstrate its customer status and its showing of significant financial hardship.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>The Scoping Memo asked for comments on whether customers with matched addresses should be automatically enrolled in the utilities’ low income programs. TURN, as part of a coalition with other consumer groups, supported automatic enrollment with an opt-out mechanism noting that Massachusetts has a similar program.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 7-8; Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 9; Final Decision at p. 14-16</p>	<p>Yes</p>
<p>TURN and the other Joint Consumers, strongly urged the Commission to adopt categorical eligibility process for the water low income programs to match the current energy low income programs and to ensure that, in general, eligibility requirements were the same between programs. As the Final Decision notes, “Joint Consumers noted that customers would benefit from uniform eligibility criteria” and the Final Decision also cited to the Joint Consumers for the premise that customers will understand the program if criteria for both are the same.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 10-11; Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 2-3; Final Decision at p. 14, 17</p>	<p>Yes</p>
<p>TURN and the Joint Consumers urged the Commission to maintain income eligibility criteria in addition to adoption of categorical eligibility. The Final Decision explicitly notes that categorical eligibility would be “another basis” to demonstrate eligibility but it would not make income eligibility requirements identical, thus maintaining both forms of eligibility.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 11; Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 4; Final Decision at p. 18</p>	<p>Yes</p>
<p>TURN urged the Commission to require similar processes among the energy and water programs, such as</p>	<p>Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 3-4, Final Decision at</p>	<p>Yes</p>

<p>self-certification, in order to prevent customer confusion and to streamline the application processes for both programs. The Final Decision agrees that all water utilities should adopt self-certification to ensure all customers have the same opportunity to participate in the program.</p>	<p>p. 30</p>	
<p>TURN looked for ways to enhance administrative efficiency for the water utilities having participated heavily in a similar process with the telecommunications utilities some years before. For example, in comments on the Scoping Memo, TURN recommended that Guideline 11(b) be revised to allow water utilities to get data sharing consent during verification processes, instead of up front. The Final Decision, referencing TURN’s joint comments with other groups, states “Joint Consumers recommend that some flexibility be build into the timing of obtaining the customer’s consent since it appears to require a data match....Joint Consumers’ proposed timing modification is reasonable and will be adopted.”</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 6; Final Decision at p. 24, footnote 23 page 31.</p>	<p>Yes</p>
<p>TURN focused on the importance of additional outreach to enhance the effectiveness of the data sharing program. We proposed that the Guidelines include language that would “encourage” further coordinated outreach on other programs and processes for Low-Income Ratepayer Assistance (LIRA) programs. California Water Association (CWA) did not endorse additional efforts related to outreach. The Final Decision cites to TURN/Joint Consumers’ comments on the importance and benefits of outreach and encourages further collaboration on outreach efforts and notes the potential benefits in cost</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 7; Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 12; Final Decision at p. 26-27</p>	<p>Yes</p>

<p>savings to avoid duplicative efforts to reach the same low income customers. While the Final Decision did not add language to the Guidelines, it states, “the main reason for not including outreach [in the Guidelines] is to keep the guidelines to their intended purpose, data sharing. We direct that the water utilities discuss potential collaboration efforts in the data-sharing plan.”</p>		
<p>In comments on the Proposed Decision, TURN urged the Commission to provide more specificity in the Decision as to the content of the opt-letter that water utilities must send to customers with hard data matches that would be automatically enrolled in the LIRA program. The Final Decision did not amend the Guidelines regarding opt-out letters as TURN requested. However, it added language (that was not in the PD) with additional specificity for the opt-out letter and added a requirement that the letters should be submitted to the Public Advisor’s office for approval.</p>	<p>Joint Consumers’ Comments on the Proposed Decision, April 25, 2011, at p. 3-4; Final Decision footnote 16 and 27.</p>	<p>Yes</p>
<p>Also in comments on the 2011 ALJ Ruling, TURN and the Joint Consumers urged more specificity around in-language and accessible formats for notices and letters that will be part of this process. The Proposed Decision added the requirement that utilities specify the languages that will be used for the program materials, broken down by district, in the data sharing plan. In comments on the PD, TURN further urged that the requirement specify accessible formats for disabled customers. The Final Decision adds a reference to putting documents in accessible formats in the listed elements of the data sharing plan.</p>	<p>Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p. 10-11; Joint Consumers’ Comments on the Proposed Decision, April 25, 2011 at p. 4; Final Decision at p. 32.</p>	<p>Yes</p>

<p>In comments on the Scoping Memo, TURN and the Joint Consumers raised an issue relating to the tracking of and outreach efforts to residents of multi-unit dwellings. This issue was discussed at the workshop, but not in the Scoping Memo. TURN and the Joint Consumers urged the Commission to gather data on multi-family dwellings to find low income customers and discuss ways to extend benefits of low income programs to these customers.</p> <p>The Final Decision discusses, at some length, the importance of tracking master metered and submetered customers through the data matching process in order to determine the effectiveness of the program and the rate of penetration for the water low income programs. The Final Decision further requires utilities to file an information-only report on the results of the information sharing that includes data broken out by “metering conditions” comparing the California Alternate Rates for Energy (CARE) and water utility records. Despite comments by CWA on the Proposed Decision urging the Commission to delete this language (a change that TURN opposed), it remained in the Final Decision.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 8-9; Comments of Joint Consumers on ALJ Ruling, February 1, 2011 at p.16; Joint Consumers’ Comments on the Proposed Decision, April 25, 2011, at p. 6-7; Joint Consumers’ Reply Comments on the Proposed Decision, May 1, 2011 at p. 4 ; Final Decision at p. 8-9; p. 34; Attachment 3.</p>	<p>Yes</p>
<p>TURN and the Joint Consumers advocated for the data sharing program to apply to all water utilities with low income programs. TURN and the Joint Consumers also filed comments opposing CWA’s request to exempt all <i>districts</i> with less than 2,000 customers, regardless of the “Class” of the utility. The Final Decision makes data sharing mandatory for both Class A and B water utilities, rejecting CWA’s proposal to narrow the requirements.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at pp 11-12; Joint Consumers’ Reply Comments on the Proposed Decision, May 2, 2011 at p. 1-2; Final Decision at p. 13</p>	<p>Yes</p>

<p>While the Decision does not expand the requirements to all utilities with low income programs, it “encourages” utilities with smaller programs to adopt a data sharing program and says the Commission will look on a case by case basis for other smaller utilities.</p>		
<p>In response to a request for comment in the Scoping Memo, TURN and the Joint Consumers urged the Commission to make a strong statement regarding the participation of municipal utilities in data sharing programs with Commission-regulated water utilities. The Final Decision cites to Joint Consumers’ comments where we noted that the Public Utilities Code requires municipal electric utilities to collaborate with energy providers. As a result, the Final Decision says that municipal utilities should also work with water utilities to not unfairly disadvantage water utility customers.</p>	<p>Opening Comments on Scoping Memo, April 23, 2010 at p. 10; Final Decision at p. 11.</p>	<p>Yes</p>

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

Claimant		CPUC Verified
<p>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>
<p>c. If so, provide name of other parties:</p> <p>National Consumer Law Center; Southwest Gas Corporation; Sierra Pacific Power Co.; Disability Rights Advocates; Southern California Edison; Golden State Water Company; San Diego Gas & Electric Company; Pacific Gas and Electric Company; Pacificorp; Director of Revenue Requirements Park Water Company; San Gabriel Valley Water Company; California American Water Company; California Public Utilities Commission; Nossaman, LLP; Manatt Phelps & Phillips LLP.</p>		<p>Correct</p>
<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>As noted above, TURN worked in coalition with Disability Rights</p>		<p>We agree that TURN worked efficiently with the</p>

<p>Advocates and the National Consumer Law Center filing documents jointly as Joint Consumers, and deferring to each other in areas where each had greater expertise. In areas where the consumer groups had shared interest and expertise, tasks were divided for efficiency.</p>	<p>other Joint Consumers to avoid duplicating the efforts of parties with similar interests</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation:</p>	<p>CPUC Verified</p>
<p>As with most quasi-legislative dockets, the precise financial benefits of TURN’s participation are difficult to quantify. Due to the critical importance of affordable access to clean supplies of water to all Californians, TURN has dedicated significant advocacy resources to water issues affecting low income consumers. In this docket, the Commission adopted an information sharing program between the water and energy low income programs to strengthen the outreach efforts of the water low income programs. The concept of data sharing among Commission-regulated utilities is not new. TURN first raised this proposal in the context of changes to the telecommunications low income program and, at that time, the Commission suggested opening this generic docket. (See, D.08-08-029 at p. 56 (“Given the complexities involved in a major effort to coordinate subscribership of all of the Commission’s low-income programs, we believe it will be necessary to open a new proceeding to address that issue and we direct the Executive Director to begin this effort’.”)) Because the water low income programs are the newest and have low rates of participation by eligible consumers, these utilities and their low income customers stand to benefit the most from this work. TURN worked to ensure that the information sharing was comprehensive, while at the same time sensitive to the privacy concerns of program participants. In addition we encouraged the Commission to promote additional outreach and to use the data exchange for automatic enrollment to add additional benefits to the costs of the program. The creation of this program will not only benefit the water utilities’ low income customers, but all ratepayers by making the outreach more efficient and cost-effective.</p> <p>TURN’s substantial contribution (as described above) warrants compensation for all of TURN’s reasonable efforts addressing those issues. The Commission should find that TURN’s costs of participation bear a reasonable relationship to the benefits realized through participation.</p>	<p>After some minor disallowances, we find the remainder of TURN’s hours and cost to be productive and subject to award.</p>

B. Specific Claim*:

<p>CLAIMED</p>	<p>CPUC AWARD</p>
<p>ATTORNEY AND ADVOCATE FEES</p>	

Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
C. Mailloux	2010	7.00	390	D.11-03-046	2,730.00	2010	6.79	390	2,648.10
C. Mailloux	2011	22.25	390	Res. ALJ-267	8,677.50	2011	19.86	390	7,745.40
R. Finkelstein	2010	1.75	470	D.10-06-046	822.50	2010	1.75	470	822.50
H. Goodson	2011	1.00	295	D.11-06-015	295.00	2011	1.00	295	295.00
\$12,525.00						Subtotal: \$11,511.00			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
C. Mailloux	2010	1.50	195	½ rate D.11-03-046	292.50	2010	1.50	195	292.50
C. Mailloux	2011	6.00	195	½ rate in Res. ALJ-267	1,170	2011	6.00	195	1,170.00
\$1,462.50						Subtotal: \$1,462.50			
COSTS									
Item	Detail			Amount \$	Amount \$				
Copies	Various Pleadings			18.40	18.40				
Postage	Various Pleadings			8.86	8.86				
Subtotal: \$27.26					Subtotal: \$27.26				
TOTAL REQUEST: \$14,014.76						TOTAL AWARD: \$13,000.76			

* 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. Claimant's records should identify specific issues for which it seeks 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.

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. TURNS Comments Documenting Specific Claim:

Description/Comment	
Comment 1	<p>Reasonableness of TURN Hours:</p> <p>TURN participated in all major aspects of this case, including filing pleadings at each opportunity in response to the Scoping Memo, ALJ Ruling and Proposed Decision. In light of the substantive role played by TURN in this docket, TURN's hours are reasonable. Ms. Mailloux was the primary advocate for TURN on this docket. Mr. Finkelstein and Ms. Goodson provided limited hours in the form of advice and consultation on energy-industry related issues. TURN's work in this case was as part</p>

	<p>of a coalition of consumer groups. This coalition allowed TURN to share the workload of drafting pleadings and developing case strategy. TURN took the lead role in drafting comments in response to the January ALJ Ruling and on the Proposed Decision, although representatives from the other groups contributed to these pleadings. These are important issues for TURN, and the hours spent by TURN advocates is reasonable compared to the impact TURN had on the docket.</p>
<p>Comment 2</p>	<p>Allocation of Hours: TURN has allocated its hours by issue area for ease of reference. The issues are identified by activity code.</p> <p>Scope of Sharing (SCP)—10% Automatic Enrollment (AE)—25% Data Plans (DP)—25% Guidelines (GDL)—25% Outreach (OR)—10% General Preparation (GP)-5%</p> <p>TURN uses the “#” to identify time entries that cannot easily be identified with a specific activity code.</p> <p>TURN requests compensation for all of the time included in this request for compensation, and therefore does not believe allocation of the time associated with these entries is necessary. However, if such allocation needs to occur, the percentage distribution of hours is noted above.</p>
<p>Comment 3</p>	<p>Reasonableness of Expenses:</p> <p>The Commission should find TURN’s direct expenses reasonable. The expenses are minimal and consist of photocopying and postage expenses necessary to comply with the Commission’s rules on service of filed documents.</p>

D. CPUC Disallowances:

Disallowances	
<p><u>Information sharing and automatic enrollment</u></p> <p>TURN’s work on guarding the</p>	<p>The Joint Consumers recommended that customers also be notified of any unauthorized disclosure of names and addresses alone. The Decision at 23 states “[w]e decline to adopt a customer notification safeguard for the disclosure of names and addresses. It is unlikely that the disclosure of names and addresses alone would constitute a disclosure of confidential information, because names and addresses generally are publicly available and existing best practices do not consider breach of name and address alone to trigger notification requirements”. We disallow 4% of TURN’s time spent preparing its Joint Consumer Comments filed on April 23, 2010 and 8% of its time spent on preparing its Joint Consumer Comments filed on</p>

<p>confidentiality of customer information.</p>	<p>February 1, 2011. We disallow this time as it did not make a substantial contribution to the final decision. Disallowance: 0.21 hours of Mailloux’s 2010 hrs=4% of total time requested 0.64 hours of Mailloux’s 2011 hrs=8% of total time requested</p>
<p>Time spent drafting, editing and finalizing the Reply Comments of the Joint Consumers on the Proposed Decision</p>	<p>The Joint Consumers had attorneys from a total of three intervenors working on this document (4.5 pgs). With a slight reduction, we find the total hours of shared efforts reasonable. The other two intervenors each requested 1.0 and 1.5 hours of compensation for this task. TURN requests a total of 3.75 hrs for Mailloux’s 2011 work on this document. We approve 2 hrs for this task recognizing Mailloux’s lead role in the preparation of this document and the scope of the work. We disallow the remaining 1.75 hrs. The adjusted total more closely reflects our standards on reasonableness of hours.</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

No

B. Comment Period: Was the 30-day comment period waived?

Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to D.11-05-020.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$13,000.76.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$13,000.76.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company, Southern California Gas Company, Southern California Edison Company, Pacific Gas and Electric Company, California Water Service Company, Great Oaks

Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company shall pay the award. We direct San Diego Gas & Electric Company, Southern California Gas Company, Southern California Edison Company, Pacific Gas and Electric Company, California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric or water revenues for the 2011 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 September 21, 2011, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision was waived.
4. This decision is effective today.

Dated March 22, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1203053	Modifies Decision? No
Contribution Decision:	D1105020	
Proceeding:	R0912017	
Author:	ALJ Division	
Payees:	San Diego Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, Pacific Gas and Electric Company, California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	07-11-11	\$14,014.76	\$13,000.76	No	lack of substantial contribution and excessive hours for scope of the work

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	The Utility Reform Network	\$390	2010/2011	\$390
Robert	Finkelstein	Attorney	The Utility Reform Network	\$470	2010	\$470
Hayley	Goodson	Attorney	The Utility Reform Network	\$295	2011	\$295

(END OF APPENDIX)