Decision 04-05-048 May 27, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing a Market Structure and Rules for the Northern California Natural Gas Industry for the Period Beginning January 1, 2003 as Required by Commission Decision 01-09-016. (U 39 G)	Application 01-10-011 (Filed October 9, 2001)

OPINION AWARDING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK

I. Summary

This decision grants $79,658.61 as intervenor compensation to The Utility Reform Network (TURN) for its substantial contributions to Decision (D.) 02-08-070 and D.03-12-061. Pacific Gas and Electric Company (PG&E) is ordered to pay this amount to TURN.

II. Background

The process leading up to the issuance of D.02-08-070 and D.03-12-061 can be traced back to the period before the expiration of the original Gas Accord.[1] According to TURN's request for compensation, prior to the filing of the above-

[1] The Gas Accord refers to the settlement agreement regarding PG&E's gas market structure and rates that was adopted in D.97-08-055 [73 CPUC2d 754], and that covered the period through December 31, 2002. The Gas Accord was then extended for a one-year period in D.02-08-070. In D.03-12-061, the Commission adopted a gas structure for PG&E for 2004 and 2005 that was based on the previously adopted Gas Accord structure.

captioned application, PG&E invited interested persons to a number of settlement meetings to discuss relevant issues concerning the Gas Accord in an attempt to reach an agreement. No settlement was reached, and PG&E filed Application (A.) 01-06-020.

A.01-06-020 sought authority to implement an open season for PG&E backbone capacity. PG&E subsequently filed a motion to withdraw A.01-06-020. In D.01-09-016, we granted PG&E's motion to withdraw the application, based in part on the uncertainty of what would happen after the expiration of the Gas Accord. (D.01-09-016, pp. 3-4.) PG&E was directed not to re-file an application for approval of an open season until PG&E filed an application proposing a market structure and rules for PG&E's intrastate gas transmission system and storage system for the period beginning January 1, 2003.

In response to D.01-09-016, PG&E filed the above-captioned application on October 8, 2001. PG&E proposed in A.01-10-011 that the existing Gas Accord structure and rates be extended for a two-year period, i.e., through the end of 2004. Protests and responses to the application were filed by various parties,[2] and a prehearing conference was noticed for January 7, 2002. Following the prehearing conference, a scoping memo and ruling was issued on February 26, 2002. Evidentiary hearings were scheduled for early August 2002.

After the filing of A.01-10-011, settlement discussions resumed. These settlement discussions resulted in the May 20, 2002 joint motion for approval of the Gas Accord II Settlement Agreement. D.02-08-070 granted the motion and the Settlement Agreement was adopted. The Settlement Agreement extended

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[2] TURN did not file a protest or response to the application. (See December 13, 2001 ALJ Ruling, p. 1.)

the Gas Accord structure and rates through December 31, 2003 for gas transmission service, and through March 31, 2004 for gas storage service.

Since D.02-08-070 extended the original Gas Accord for an additional year, from January 1, 2003 to December 31, 2003, it was still necessary to address what PG&E's gas structure and rules should look like after 2003. PG&E's Gas Accord II Amended Application was filed on January 13, 2003, and evidentiary hearings were held in April 2003.

TURN, along with other interested parties, submitted prepared testimony. Although both of TURN's witnesses were made available for cross-examination, the parties only had cross-examination questions for TURN's witness Michel Florio. (7 R.T. 697-711; 8 R.T. 849-850.) TURN's prepared testimony was admitted into evidence as Exhibits 43, 44, and 52. TURN also participated in the evidentiary hearings, filed opening and closing briefs, and filed comments on the proposed decision, and the alternate proposed decision.

D.03-12-061 was adopted by the Commission at the December 18, 2003 meeting. The decision addressed the gas market structure for PG&E for 2004 and 2005, and adopted rates for PG&E's gas transmission and storage facilities and operations for 2004. D.03-12-061 was mailed to the parties on December 23, 2003. TURN timely filed its request for compensation on February 23, 2004.

No one filed any opposition to TURN's request for compensation.

On April 22, 2004, TURN filed an amendment to page four of its request for compensation. The amendment clarifies that, although TURN was not a signatory to the 'Joint Motion For Approval Of Gas Accord II Settlement Agreement And Request For Shortened Comment Time' filed on May 20, 2002, TURN did not oppose the Joint Motion. In fact, as discussed later, the

Commission adopted certain of TURN's contentions in the decision approving the Gas Accord II Settlement.

III. Requirements for Award of Compensation

The applicable intervenor compensation rules are found in Pub. Util. Code § 1801 and following, and in Article 18.8 of the Commission's Rules of Practice and Procedure.[3] In order for the Commission to award compensation to a "customer" for preparation and participation in a proceeding, the customer must comply with § 1804 and satisfy both of the following requirements:[4]

> "(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
>
> "(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship." (Pub. Util. Code § 1803.)

Section 1804 provides in part that a notice of intent to claim compensation must be filed by the customer. The notice must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation that the customer expects to request. The notice may also include a showing by the customer that participation in the proceeding would pose a significant financial hardship.

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[3] Unless otherwise stated, all statutory references are to the Public Utilities Code.

[4] For the purposes of the intervenor compensation provisions, a "customer" is defined in Section 1802(b). In the March 1, 2002 ALJ ruling regarding TURN's notice of intent to claim compensation, TURN was found to meet the definition of a customer because it is a "group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers." (Pub. Util. Code § 1802(b).)

On February 6, 2002, TURN filed its notice. TURN elected to make its showing of significant financial hardship by referencing the December 19, 2001 ruling issued in A.01-09-003, wherein TURN received a finding of significant financial hardship. Under § 1804(b)(1), that previous finding entitles TURN to a rebuttable presumption of eligibility for compensation in this proceeding. No one challenged this presumption. As a result, TURN has made a showing of significant financial hardship. In the March 1, 2002 Administrative Law Judge (ALJ) ruling in this proceeding, TURN was found eligible for an award of compensation in accordance with § 1804(b)(1). Thus, TURN has satisfied the eligibility and significant financial hardship requirements, and is eligible to seek an award of compensation in connection with its contribution to D.02-08-070 and D.03-12-061.

IV. Substantial Contribution to Resolution of Issues

A. Introduction

The next issue is whether TURN made "a substantial contribution to the adoption, in whole or in part, of the commission's order or decision." (Pub. Util. Code § 1803(a).) The term "substantial contribution" is defined in subdivision (h) of § 1802 as follows:

> " 'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission

> may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

If the person requesting compensation is found to have made a substantial contribution, then the Commission must describe the substantial contribution and determine the amount of compensation to be paid. (Pub. Util. Code § 1804(e).)

TURN's notice of intent stated the following about its planned participation in this proceeding:

> "TURN is interested in most of the unresolved issues listed by ALJ Wong during the prehearing conference, especially issues that affect the quantity and price of relinquished or expansion capacity held by PG&E's Core Procurement Department on behalf of core customers. TURN thus intends to participate in this proceeding to the fullest extent possible, though TURN cannot at this time determine the extent of our participation if evidentiary hearings are ordered."

The various issues discussed at the prehearing conference were set forth in the February 26, 2002 scoping memo and ruling. The scoping memo issues were further refined in ALJ rulings dated September 30, 2002, and February 14, 2003.

B. D.02-08-070

1. TURN's Position

TURN's request for compensation, as amended on April 22, 2004, states that it made a substantial contribution to D.02-08-070 in the following manner.

> "TURN participated in settlement negotiations conducted after PG&E filed A.01-10-011, and TURN did not oppose the 'Joint Motion For Approval Of Gas Accord II Settlement Agreement And Request For Shortened Comment Time' filed on May 20, 2002. The Commission granted the joint motion to approve the Gas Accord II Settlement Agreement on August 22, 2002 in D.02-08-070. Pursuant to the settlement agreement, the market structure, rates, and terms and conditions of service for PG&E, which were adopted in D.97-08-055 and modified in D.00-02-050 and D.00-05-049, were extended through December 31, 2003 for gas transmission, and through March 31, 2004 for gas storage. The procedures and guidelines for contracting for gas transmission and storage services, as agreed to in the Gas Accord II Settlement Agreement, were also approved."

TURN is requesting full compensation for the time it spent for litigation preparation and settlement negotiations prior to the issuance of D.02-08-070. This includes the work that TURN undertook in connection with A.01-06-020, which resulted in the issuance of D.01-09-016, as well as its work related to settlement activities which led to the issuance of D.02-08-070. TURN's request for compensation states that 7.90 hours were spent on A.01-06-020, and 36.95 hours were spent in settlement negotiations which resulted in D.02-08-070.

TURN's request states that prior to the filing of A.01-10-011, PG&E invited parties to a number of settlement meetings to discuss issues about PG&E's gas market structure and rates before the expiration of the Gas Accord. These talks, however, were overtaken by the energy crisis, and did not lead to any proposed settlement. TURN contends that these negotiations addressed many of the issues that were later settled or litigated in A.01-10-011. TURN requests full compensation for the 36.95 hours spent in settlement negotiations in 2000.

Citing D.00-07-046 and D.00-07-015, TURN notes that the "Commission has held that active participation in settlements justifies compensation, especially when it contributes to the development of a record that assists the Commission." (TURN Request For Compensation, p. 5.) TURN also notes that its participation leading up to D.02-08-070 is similar to the negotiations and settlement concerning PG&E's operational changes in I.99-07-003, in which the Commission granted TURN full compensation in D.01-03-030 for its participation. TURN also cites D.95-08-024 and D.98-11-014 in support of its request that these settlement negotiations be compensated.

As for the work that TURN performed in connection with A.01-06-020, TURN is requesting that it be compensated for 7.90 hours of work. TURN states that A.01-06-020 was the direct antecedent of this proceeding, although it was later withdrawn. TURN contends that compensation for the work that it performed in A.01-06-020 is appropriate, and that the Commission has awarded compensation in similar circumstances in D.02-03-035 and D.00-10-007.

2. Discussion

The Commission has recognized in prior decisions that:

> "The requirement that an intervenor's participation substantially assist the Commission in the making of its order is a tool the Commission applies in ensuring that compensated participation provides value to ratepayers. 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." (D.01-03-030, p. 6; D.00-07-046, p. 5.)

The assessment as to whether TURN made a substantial contribution to D.02-08-070 is made more difficult because a settlement was adopted in that decision. The use of an alternative to litigation, such as a settlement, makes it harder to determine whether a particular intervenor contributed to a proceeding. When settlements are used instead of, or as a supplement to paper proceedings and/or evidentiary hearings, the paper trail may be minimal or non-existent. If a paper trail exists, it may not consist of party-specific pleadings, but rather multi-party products.

We have stated in the past that:

> "We do not believe that participation in settlement negotiations, in and of itself, is sufficient participation to bring value to ratepayers, warranting compensation. However, we also recognize that the intervenor compensation program is intended to encourage the participation of all customers in Commission proceedings by helping them overcome the cost barriers to effective and efficient participation. [Footnote omitted.] In this manner, the record is made more complete and the decision making process is improved. Although we sometimes find difficulty in evaluating the contribution of a customer in a settlement setting, we expect to continue to use our judgment and the discretion the Legislature has afforded us to award compensation to a party who participated in settlements when we find that party's contribution to our order or decision was substantial." (D.01-03-030, p. 7; D.00-07-046, p. 6.)

TURN acknowledges in its request for compensation that "It is difficult in the present situation to define the benefits of TURN's participation based on the individual settlement provisions." (TURN Request for Compensation, p. 5.) TURN points out that since Rule 51.9 precludes disclosure of settlement discussions, and because there was no testimony or hearings held in advance of the filing of the settlement, there is no record to identify the positions of the parties. Notwithstanding this lack of a record, TURN asserts:

> "TURN believes that its participation assisted the Commission by providing information regarding the benefits of the settlements for core customers. TURN participated in order to ensure that there were no negative consequences for core customers and to assure positive effects were possible. TURN consistently promoted its policy position that a temporary extension of the Gas Accord was the most appropriate policy course. TURN also supported requiring PG&E to file a cost of service study to support any rate changes. … Decision 02-08-070 generally agreed with both of these policy recommendations." (TURN Request for Compensation, p. 5.)

TURN is seeking compensation for its work associated with A.01-06-020, and for its work related to the settlement which led up to the adoption of D.02-08-070 in A.01-10-011. Based on the filings in A.01-06-020, and the settlement negotiations in A.01-10-011 which led to the adoption of D.02-08-070, we conclude that TURN made a substantial contribution to D.02-08-070. We reach this conclusion based on two considerations.

First, TURN filed comments on the draft decision and the alternate draft decisions in A.01-06-020, and made two ex parte filings. TURN had argued that PG&E's open season application should be dismissed because the expiring Gas Accord structure should be evaluated prior to the holding of an open season. D.01-09-016 allowed PG&E to withdraw its open season application, and directed PG&E not to file a new open season application until PG&E filed an application proposing a gas market structure and rules for the period beginning January 1, 2003. In D.02-08-070, the Commission essentially adopted TURN's procedural recommendation by extending the Gas Accord for one year, allowing existing transmission contracts to be extended, and to hold an open season for any remaining transmission capacity. (See D.02-08-070, App. A, § V.)

Second, although TURN was not a signatory to the May 20, 2002 "Joint Motion For Approval Of Gas Accord II Settlement Agreement And Request For Shortened Comment Time," TURN did file a reply on June 17, 2002 to the comments on the proposed Gas Accord II settlement agreement. In its reply at pages 2 and 3, TURN stated that it did "not object to a one year extension as a realistic means of providing some market certainty and not wasting resources prior to resolution of related issues in Bankruptcy Court." D.02-08-070 extended the Gas Accord structure by one year, and recognized that none of the commenting parties voiced any opposition to extending the terms and conditions of the Gas Accord by one year. D.02-08-070 also stated that the extension of the Gas Accord will provide participants in the gas market in PG&E's service territory with "commercial certainty" over PG&E's gas transmission and storage, and will "provide certainty as to the gas market structure for PG&E while the Bankruptcy Court decides which plan of reorganization is to be adopted." (D.02-08-070, pp. 18-19.) Thus, the Commission adopted TURN's contention that the extension of the Gas Accord for one year would provide market certainty while PG&E's bankruptcy proceeding continued. We conclude that TURN made a substantial contribution to D.02-08-070.

C. D.03-12-061

1. TURN's Position

D.03-12-061 adopted a gas market structure for PG&E's gas transmission and storage system for two years beginning January 1, 2004, and adopted rates for 2004. TURN states that it substantially participated in A.01-10-011 by submitting the testimony of two witnesses, and making "recommendations in the areas of policy, ratemaking treatment for unbundled backbone rates, ratemaking treatment for local transmission rates, as well as proposing disallowances to both the capital and O&M components of the revenue requirement." (TURN Request For Compensation, p. 6.) TURN also notes that it was the only party that provided an analysis that attacked the financial benefits of the unbundled backbone structure.

TURN points out that although D.03-12-061 did not adopt all of TURN's recommendations, the Commission did agree with the majority of TURN's recommendations. According to TURN, these key recommendations included "adopting only a one-year extension, not allowing any roll-in of Line 401 costs into core rates, and not adopting PG&E's local transmission rate design modifications…." (TURN Request For Compensation, p. 6.)

In Table 1 of TURN's Request For Compensation, TURN included a summary of its contentions and recommendations on the various issues, together with the Commission's disposition of those issues. TURN contends that the record in this proceeding "amply illustrates" that TURN made a substantial contribution to D.03-12-061.

2. Discussion

Several of TURN's proposals or analyses substantially assisted the Commission in the development of D.03-12-061. The proposals or recommendations of TURN that were adopted by the Commission in D.03-12-061 are reflected in Table 1 of TURN's Request for Compensation.

TURN acknowledges that some of TURN's policy positions were identical to those of other parties, including the Office of Ratepayer Advocates and the City of Palo Alto. TURN points out, however, that it provided significant independent legal and factual analysis on the various issues, such as the roll-in of Line 401, and the policy and factual issues concerning the costs and rates for backbone and local transmission service. TURN contends that § 1802.5 allows the Commission to award full compensation even when a party's participation overlaps in part with the showings made by other parties.

We agree with TURN that although some of its positions overlapped with other parties, TURN provided significant input supplementing or complementing the showings of other parties on the various issues. TURN's input is in our resolution of the issues. Based on TURN's activities in A.01-10-011 following the adoption of D.02-08-070, and our discussion of TURN's positions in D.03-12-061, we conclude that TURN made a substantial contribution to D.03-12-061.

V. Reasonableness of the Requested Compensation

A. Amount Requested

Having found that TURN made a substantial contribution to D.02-08-070 and D.03-12-061, the next step is to determine the amount of compensation that should be paid. (Pub. Util. Code § 1804(e).)

TURN requests $79,658.61 for work performed in this proceeding, consisting of $72,038.50 for attorney and staff time, $4,517.70 for professional consulting, and $3,102.41 for direct expenses. TURN submitted logs showing the time and work performed by TURN's staff and its consultant, and the direct expenses that TURN incurred.

As mentioned above, TURN is requesting compensation for work related to A.01-06-020 and A.01-10-011. For A.01-06-020, TURN is requesting 7.9 hours of attorney time in the total amount of $1661. Although TURN incurred $48.77 in expenses in A.01-06-020, TURN did not include that amount in its request for compensation.

For work related to A.01-10-011, TURN is requesting 293.48 hours of attorney time in the total amount of $70,377.50.[5] In addition, TURN is requesting 24.42 hours of professional consulting, which resulted in a fee of $4517.70. TURN also incurred direct expenses totaling to $3102.41.

TURN's request for compensation also allocates the costs and fees by issue and task as shown in the Request For Compensation at pages 12 and 13, and in Appendix A and Appendix B.

B. Hours Claimed and Hourly Rates

Although TURN incurred a total of 308.50 hours of attorney time, TURN is seeking compensation for 301.38 hours due to the discounting by 50% of the time related to the preparation of the intervenor compensation documents. TURN contends that the number of hours it is requesting is reasonable because this proceeding was "tantamount to a general rate case," and involved both revenue requirement and cost allocation issues. (TURN Request For Compensation, p. 14.)

Assessing the reasonableness of the number of hours that an intervenor devoted to a proceeding may be difficult where the proceeding was resolved through settlement, as here. Hours spent in the hearing room are generally easier to document than those spent at the negotiating table. Considering the extent of TURN's activities that are documented, as discussed in preceding sections, the hours claimed bear a reasonable relationship to those activities.

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[5] TURN notes that the attorney time related to intervenor compensation was discounted by 50%.

Further, as we discuss in Section V.C below, TURN's participation clearly benefited ratepayers far beyond the total costs TURN is claiming. In light of these factors, we find that TURN has adequately supported the attorney time incurred for this proceeding.

TURN also asserts that the hourly rates that it is requesting for its attorney and staff time are reasonable, or have been adopted previously by the Commission. The hourly rates that TURN is requesting are shown in Table 5 of the Request For Compensation. As shown in that table, the 2003 rates that TURN is requesting for two of its attorneys have not yet been adopted by the Commission. The other hourly rates that TURN is requesting have been previously adopted by the Commission in prior intervenor compensation decisions, as cited by TURN in that table.

1. Marcel Hawiger

TURN is requesting an hourly rate of $250 for Marcel Hawiger for 2003. We have not yet adopted a 2003 hourly rate for Hawiger. TURN notes that the requested hourly rate of $250 is an increase of $50 per hour, a 25% increase, over the hourly rate that was approved for his work in 2002. TURN recognizes that this is a very substantial increase when viewed on a year-to-year basis, and that this exceeds the typical 10 to 15% annual increments that the Commission usually applies.

TURN contends that Hawiger's hourly rate has not kept pace with market rates. Hawiger's hourly rate in 1998 was $160 per hour, and in 2002 was $200 per hour. On an annual basis, the increase in Hawiger's hourly rate averaged just over 5% per year. Had Hawiger's hourly rate in 1998 been increased on an annual basis by 10%, his rate would have exceeded $250 in 2003.

TURN also contends that the requested hourly rate of $250 is reasonable in light of the outstanding work that he performed in this proceeding, and compares favorably to the market rates paid to persons of comparable training and experience who offered similar services in 2003.

According to TURN's Request For Compensation, Hawiger joined TURN in August 1998. He has worked exclusively on energy-related cases, and has been TURN's lead attorney on all major gas proceedings over the past four to five years, as well as lead counsel in several other proceedings. In his lead counsel role, Hawiger has supervised the work of less-experienced attorneys. Hawiger graduated from law school in New York in 1993, worked as a staff attorney for legal services in Washington State from 1994 to 1996, and was the Executive Director of a non-profit fair housing organization in Palo Alto from 1996 to 1998. Hawiger was admitted to the California bar in January 1998.

According to TURN, the request of $250 per hour for Hawiger for work in 2003 reflects a conservative market rate for attorneys with similar training, experience, and skill. Based on the "Of Counsel" attorney fee surveys, which TURN summarized in its request, associate rates for San Francisco area and Southern California area firms for 2000 to 2001 ranged from $110 to $375 per hour, and in 2002 to 2003 from $150 to $605 per hour.[6] Based on the survey, and excluding the lowest and highest rates in the survey, TURN states that the average hourly associate rate was $253 for the 2002-2003 period. TURN also notes that the "Of Counsel" surveys reflect a 17% increase in rates between the two survey periods.

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6 TURN points out that the 2002/2003 figures in the survey represent rates as of January 1, 2002. (TURN Request For Compensation, p. 19.)

Based on Hawiger's past experience, and his five years of energy regulatory practice before the Commission, TURN contends that Hawiger should be considered at least the equivalent of a mid-range associate in a law firm, and that the appropriate mid-range hourly rate should be $250 to $265. TURN requests that the Commission adopt $250 as a reasonable hourly rate for Hawiger's work in 2003.[7]

In D.03-10-062, we awarded a 2002 rate of $265 to Itzel Berrio and Enrique Gallardo, who are 1997 law school graduates with several years less legal experience than Hawiger. Based upon Hawiger's experience, his work performed in this proceeding, and a comparison of the market rates for attorneys of similar experience and qualifications, we award Hawiger a rate of $250 per hour for his work performed in 2003, and for his 17 hours of work in 2004 in this proceeding.

2. Daniel Edington

The hourly rate requested by TURN for Daniel Edington's time in 2003 is $190. TURN made the same request for Edington's 2003 hourly rate in its Request For Compensation filed in A.03-07-032 on February 23, 2004.

According to the request for compensation, Edington graduated from law school in 2002 and joined TURN at the beginning of 2003. TURN points out that in recent compensation decisions, D.02-05-005 and D.03-01-075, the Commission adopted hourly rates of $165 to $175 for work performed in 2001

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[7] TURN is also requesting that Hawiger's 17 hours of work in 2004 in this proceeding, which includes work related to its compensation request, be compensated at $250 per hour.

by recent law school graduates. Increasing these rates by 7.5% per year results in a 2003 rate of $190 to $202 per hour.

Based on the "Of Counsel" survey, and excluding the lowest and highest rates, the average reported low-end associate rate for 2000/2001 was $151 per hour. For 2002/2003, excluding the lowest and highest rates, the average reported low-end associate rate increased by approximately 16.5% to $176 per hour. Applying a conservative 7.5% increase to the $176 hourly rate, TURN calculates that a low-end associate hourly rate for 2003 should be $190.

Based on Edington's experience, his work performed in this proceeding, and a comparison of the market rates for attorneys of similar experience and qualifications, we award Edington a rate of $190 per hour for the work performed in 2003.

3. Other Attorney and Staff

TURN requests that the hourly rates for Michel Florio for work performed in 2001, 2002, and 2003 be compensated at an hourly rate of $350, $385, and $435, respectively. These hourly rates were previously adopted for Florio's work in other proceedings, and we adopt them for Florio's work as reasonable for the work he performed in this proceeding.

TURN requests that the hourly rate for Randy Wu for work performed in 2002 be compensated at an hourly rate of $385. This hourly rate was previously adopted for Wu's work in another proceeding, and we adopt this rate for Wu's work in 2002 in this proceeding.

TURN requests that the hourly rate for Hayley Goodson for work performed in 2002 be compensated at an hourly rate of $95. This hourly rate was previously adopted for Goodson's work in another proceeding, and we adopt this rate for Goodson's work in 2002 in this proceeding.

4. Professional Consulting

TURN's compensation request includes 24.42 hours of consulting time for the work of William Marcus of JBS Energy, Inc. in 2003. Marcus' hourly rate of $185 for work performed in 2003 in another proceeding was previously approved in D.03-10-011. We adopt this rate requested for Marcus' consulting work in 2003 in this proceeding.

5. Costs

TURN's request for its direct expenses of $3,102.41 is reasonable.

C. Benefits To Ratepayers

In D.98-04-059 [79 CPUC2d 628], the Commission adopted a requirement that the customer must demonstrate that its participation was "productive," as that term is used in § 1801.3. D.98-04-059 states that "the participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation," and to "demonstrate productivity, a customer should try to assign a reasonable dollar value on the benefits of its participation." (79 CPUC2d at p. 650.) The purpose of such an exercise ensures that: "(1) ratepayers receive value from the compensated intervention; and (2) only reasonable costs are compensated." (79 CPUC2d at p. 669.)

TURN points out that the adoption of its positions on the roll-in of the Line 401 costs and local transmission rate design resulted in a reduction of the annual core revenue by about $26.6 million as compared to PG&E's proposal. (See D.03-12-061, pp. 270, 338-339.) In addition, TURN points out that the rejection of PG&E's proposed winter reliability criterion directly reduced the capital cost for 2004 by $2 million. (See D.03-12-061, pp. 36-37.)

As demonstrated by the savings to core customers, and in comparison to the amount of compensation that TURN is requesting in this proceeding, we find that TURN's participation was productive, and bears a reasonable relationship to the benefits ratepayers realized through TURN's participation.

D. Award

We have reviewed the number of hours spent by TURN's attorneys in this proceeding and the associated direct expenses. We find that the direct expenses, the number of hours billed, and the hourly rates to be reasonable. TURN should be awarded compensation in the amount of $79,658.61. PG&E should be ordered to pay this amount to TURN.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15), commencing the 75th day after TURN filed its amended compensation request and continuing until full payment of the award is made.

As with all intervenors seeking compensation, TURN is reminded that it is subject to audit or review by the Commission staff. Therefore, adequate accounting records and other necessary documentation must be maintained and retained in support of all claims for intervenor compensation. These records should identify specific issues for which TURN requested compensation, the actual time spent by each person, the applicable hourly rate, fees paid, and any other costs claimed.

VI. Waiver of Comment Period

Since this decision addresses an intervenor compensation matter, public review and comment on the draft decision is waived pursuant to § 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure.

VII. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner, and John S. Wong is the assigned ALJ.

Findings of Fact

1. TURN filed a timely request for an award of compensation.

2. TURN has made a showing of significant financial hardship.

3. TURN was found eligible for an award of compensation in the March 1, 2002 ALJ ruling.

4. D.02-08-070 essentially adopted TURN's procedural recommendation by extending the Gas Accord for one year, allowing existing transmission contracts to be extended, and an open season for any remaining transmission capacity.

5. TURN's contention that the extension of the Gas Accord for one year would provide market certainty while PG&E's bankruptcy proceeding continued was adopted by the Commission in D.02-08-070.

6. The proposals or recommendations of TURN that were adopted by the Commission in D.03-12-061 are reflected in Table 1 of TURN's Request for Compensation.

7. Although some of TURN's positions overlapped with other parties, TURN provided significant input on the various issues, thus supplementing or complementing the showing of other parties.

8. Hawiger has several years more legal experience than the 1997 law school graduates in D.03-10-062 who were awarded a 2002 rate of $265 per hour.

9. Based on Hawiger's experience, his work performed in this proceeding, and a comparison of the market rates for attorneys of similar experience and qualifications, Hawiger 's rate for 2003, and for his 17 hours of work in 2004, should be $250 per hour.

10. Based on Edington’s experience, his work performed in this proceeding, and a comparison of the market rates for attorneys of similar experience and qualifications, Edington’s rate for 2003 should be $190 per hour.

11. TURN’s hourly rates for Florio, Wu, Goodson, and the hourly rate for consulting by Marcus, are consistent with the rates we have approved in prior Commission decisions.

12. The costs of $3,102.41 that TURN incurred are reasonable.

13. TURN’s participation in this proceeding was productive, and bears a reasonable relationship to the benefits ratepayers realized through TURN’s participation.

Conclusions of Law

1. TURN made a substantial contribution to D.02-08-070.

2. TURN made a substantial contribution to D.03-12-061.

3. TURN should be awarded $79,658.61 for its substantial contribution to D.02-08-070 and D.03-12-061.

4. PG&E should be ordered to pay TURN $79,658.61 plus any applicable interest for TURN's contributions to D.02-08-070 and D.03-12-061.

5. Pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules, the 30-day public review and comment period for today's decision should be waived.

6. This order should be effective today so that TURN may be compensated without undue delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded $79,658.61 in compensation for its substantial contribution to Decision (D.) 02-08-070 and D.03-12-061.

2. Pacific Gas and Electric Company (PG&E) shall, within 45 days of today's date, pay to TURN the amount of $79,658.61. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning July 7, 2004 and continuing until full payment of the award is made.

3. The public review and comment period for today's decision is waived.

This order is effective today.

Dated May 27, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0405048
Contribution Decision(s):	D0208070 D0312061
Proceeding(s):	A0110011 A0106020
Author:	ALJ Wong
Payer(s):	Pacific Gas and Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	2/23/04	$79,658.61	$79,658.61	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	$250	2003 2004	$250
Michel	Florio	Attorney	The Utility Reform Network	$435	2003	$435
Daniel	Edington	Attorney	The Utility Reform Network	$190	2003	$190
Randy	Wu	Attorney	The Utility Reform Network	$385	2002	$385
Hayley	Goodson	Paralegal	The Utility Reform Network	$95	2002	$95
William	Marcus	Economist	The Utility Reform Network	$185	2003	$185