

Decision 88 08 035 AUG 24 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SOUTHERN CALIFORNIA EDISON COMPANY )  
(U 338-E) for authorization to )  
implement a plan of reorganization )  
which will result in a holding )  
company structure. )

AUG 25 1988

Application 87-05-007  
(Filed May 6, 1987)

**OPINION ON TURN'S  
REQUEST FOR COMPENSATION**

By this decision, we grant Toward Utility Rate Normalization (TURN) \$18,322.73 for its participation in this application. TURN had asked for \$50,520.22.

**Introduction**

By Decision (D.) 88-03-018 dated March 9, 1988, the Commission found TURN eligible for compensation in this proceeding. On April 1, 1988, TURN filed a request for \$50,520.22 for its participation. On April 29, 1988, Southern California Edison Company (Edison) filed a response to TURN's request stating that if compensation is granted at all, it should be only \$7,528.33. However, Edison challenges TURN's right to file at all, contending that TURN failed to comply with Section 1804(c) of the Public Utilities Code (PU Code) and Rule 76.56 of the Commission's Rules of Practice and Procedure which require requests for compensation to be filed within 30 days of the Commission's final order or decision in a proceeding.<sup>1</sup> We recently addressed this question in D.86-01-034 dated January 23, 1988, in Application 85-09-062 of Pacific Gas and Electric Company, where, at mimeo. p. 2, the Commission said:

<sup>1</sup> By D.88-01-063 dated January 28, 1988, the Commission, with conditions, granted Edison's request in this application to form a holding company.

"We interpret PU Code § 1804(c) and the related Rule 76.56 to allow 30 days for the filing of a request for compensation following the issuance of a final order and decision and a Commission finding of eligibility for compensation. The 30-day filing period does not begin until the final order or decision is issued and the customer has been found eligible. The clear statutory intent is that a customer must know he is eligible for compensation before he is obligated to request compensation. . . ." (Emphasis in original.)

We make the same interpretation here, and Edison's request that TURN's request be denied on the grounds of late filing is denied.

TURN's Request

As detailed on Table 1, TURN requests \$50,520.22 for its participation which, TURN claims, constituted a substantial contribution to D.88-01-063.<sup>2</sup> TURN segregates its request into four general areas of activity and expenses: prehearing, hearing and posthearing, preparation of its request, and out-of-pocket expenses. It asks for 100% of all activities and expenses except hearing and posthearing, for which it asks about one-third of the time spent by its attorney and consultant. Broken down into the four general areas noted above, TURN's request may be detailed as follows:

Prehearing	\$33,612.50
Hearing and posthearing	10,712.50
Preparation of request	2,125.00
Out-of-pocket expenses	<u>4,070.22</u>
Total	\$50,520.22

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<sup>2</sup> Rule 76.52(g): "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 had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.

TABLE 1

SUMMARY OF COMPENSATION REQUEST

## I. ATTORNEY TIME

<u>Classification</u>	<u>Adjusted Hours</u>	<u>Hours Claimed</u>	<u>Hourly Rate</u>	<u>Amount</u>
Pre-Hearing	88.9	88.9	\$125.00	\$11,112.50
Hearing and Post- Hearing	194.7	64.9	\$125.00	8,112.50
Attorneys Fees	17.0	17.0	\$125.00	2,125.00
Total Attorney Time	300.6	170.8	\$125.00	\$21,350.00

## II. EXPERT TIME

<u>Classification</u>	<u>Hours Billed</u>	<u>Hours Claimed</u>	<u>Hourly Rate</u>	<u>Amount</u>
Pre-Hearing	180	180	\$125.00	\$22,500.00
Hearing and Post- Hearing	62.5	20.8	\$125.00	2,600.00
Total Expert Time	242.5	200.8	\$125.00	\$25,100.00

## III. OUT OF POCKET EXPENSES

Attorney	\$ 1,876.69
Consultant (Includes Support Staff)	2,193.53
Total Expenses	4,070.22
 TOTAL REQUEST	 \$50,520.22

The total prehearing expense is for attorney and consultant time primarily devoted to discovery and preparation of TURN's exhibits and represents, according to TURN, hours for their services adjusted to eliminate any inefficient time spent. Even though TURN concedes that it did not prevail on all the issues it pursued in this proceeding, it believes it should be allowed 100% of prehearing time based on Commission D.85-06-025, pp. 5 and 6, and D.85-08-012, p. 15. TURN claims that it could not allocate its time by issue prior to hearing and that even though it did not prevail on the majority of issues, the significance of the issues on which it did prevail justifies full compensation for prehearing activities.

The \$10,712.50 sought by TURN for hearing and posthearing activities includes \$8,122.50 for its attorney and \$2,600.00 for its expert witness. These amounts reflect about one-third of the hours spent on those activities, a figure TURN believes is a conservative reflection of the substantial contribution made by TURN.<sup>3</sup> Again, as in its prehearing activities, TURN claims it was impossible to allocate hearing and briefing time by issue given the nature of and interrelationships of the issues. To obtain its estimate of one-third of the hearing/posthearing hours as compensable, TURN believes the proceeding can be divided into three broad and overlapping areas: transaction controls, financial controls, and affiliate payments. TURN classes the first of these areas, transaction controls, as by far the largest of the three, involving all matters arising from transactions among Edison, the holding company, and the affiliates. Based on what TURN perceives as Commission adoption of TURN positions which substantially

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<sup>3</sup> The contribution made by TURN to D.88-01-063 is addressed in the discussion section which follows.

affected the first two broad areas identified above,<sup>4</sup> TURN concludes its request for only one-third of its hearing/posthearing time is extremely reasonable.

TURN seeks \$2,125.00 for preparing its request, pointing out only that, as in D.87-05-029, pp. 15 and 16, the Commission has previously recognized that intervenors should be compensated for time reasonably spent in preparing their requests.

TURN claims all out-of-pocket expense of \$4,070.22 for its attorney and expert witness. This figure includes travel, subsistence, communications, mailing, courier service, reproduction, and other miscellaneous expenses, and support staff for the consultant. TURN requests the entire amount of these expenses claiming the great bulk of the expenses were connected with its prehearing preparation or are fixed expenses that would not have varied with the level of TURN's participation.

#### Edison's Response

Edison responded to TURN's request on April 29, 1988. Edison maintains the amount of compensation should be, at most, \$7,528.33. Edison obtains its recommended compensation by concluding that TURN made a substantial contribution to only one of the twelve issues it addressed in this proceeding. According to Edison, TURN's efforts should be prorated in proportion to the issues on which TURN made a substantial contribution compared to the total number of issues it addressed.

Table 2 is a list of the issues Edison believes TURN addressed in this proceeding. Edison claims that TURN maintains it made a substantial contribution to Issues 11 and 12 on Table 2, which involved Conditions 1 and 4 adopted by the Commission in D.88-01-063. Edison's position is that TURN made a contribution only on Condition 1, Issue 11, and that TURN should receive no

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4 Ibid.

compensation for the other 11 issues on Table 2 because they involve TURN's overall recommendation that the application be denied, which was rejected by the Commission, or conditions which were adopted by the Commission but opposed by TURN, or conditions proposed by TURN but rejected by the Commission.

EDISON'S LIST OF TURN ISSUES

TURN addressed the following issues in this proceeding:

1. TURN's proposal, rejected by the Commission, that the Commission deny Edison's request for permission to form a holding company.
2. Condition No. 2, adopted by the Commission, regarding accounting and other procedures to prevent cross-subsidization of nonutility activities by the utility.
3. Condition No. 8, adopted by the Commission, regarding transfers of proprietary data of the utility to nonutility affiliates.
4. Condition No. 13, adopted by the Commission, involving reports to be supplied to the Commission regarding the Holding Company's assets, revenues, expenses, and employees.
5. Condition No. 14, adopted by the Commission, regarding the payment of royalties by nonutility subsidiaries upon the receipt of intellectual property rights from the utility.
6. TURN's proposed condition, rejected by the Commission, requiring Edison's nonutility affiliates to provide the Commission with their projected capital budgets and sources of capital for defined periods in the future.
7. TURN's proposed condition, rejected by the Commission, that Edison be prohibited from purchasing electricity from its nonutility affiliates.
8. TURN's proposed condition, rejected by the Commission, that the holding company be required to give the Commission notice before investing more than fifteen percent of its assets in nonutility subsidiaries.
9. TURN's proposed condition, rejected by the Commission, requiring the holding company to give the Commission notice prior to divesting any of its subsidiary operations.
10. TURN's proposed condition, rejected by the Commission, requiring that Edison's nonutility affiliates pay a five percent royalty on their gross revenues for intangible benefits.
11. Condition No. 1, adopted by the Commission, regarding the Commission's access to the books and records of the nonutility affiliates.
12. Condition No. 4, adopted by the Commission, regarding the testimony of the employees and officers of nonutility affiliates in Commission proceedings.

Relying on D.85-08-012, p. 6, Edison goes further than its 12 issues noted above and, because of their importance, weights its Issue 7, sales of energy to affiliates, and Issue 10, royalty payments, by a factor of 2 to come up with the equivalent of 14 issues. Maintaining TURN prevailed on only one of the weighted 14, Edison concludes TURN should receive only 1/14th of the majority of its costs for participating. And because the Commission has found in the past (D.85-08-012) that when an intervenor prevails on only a small proportion of the issues, its effort in all phases of participation, such as prehearing activities, should be prorated based on the ratio of issues on which it prevailed to total issues it addressed. Thus Edison uses the factor of 1/14th in a recalculation of the amounts TURN is entitled to, although Edison does concede that one-third of TURN's attorney's hearing time is compensable. Edison also halves the amount requested by TURN for preparation of its request because it maintains TURN spent substantial time arguing for compensation on issues on which it knew it did not make a substantial contribution. Edison believes the Commission should not compensate intervenors for time spent drafting frivolous claims for compensation.

Edison's calculation of a reasonable compensation for TURN based on its position discussed above is \$7,528.33 and is detailed in Appendix A, which is a copy of Attachment B to Edison's April 29, 1988 response.

No other parties responded to TURN's request.

#### Discussion

It appears that TURN has tried to enhance its actual influence on D.88-01-063 by what one might call creative aggregation, collapsing its issues into three general categories, claiming contributions on two out of three, but settling for a one-third factor. On the other hand, Edison disaggregates the issues into the equivalent of 14.



We prefer to adopt TURN's list of issues contained in its Exhibit 16, enumerated at pp. 16 and 17 of D.88-01-063, and covered by TURN in its concurrent brief filed October 23, 1987. These total 8 and are listed on Table 3. If we were to take Edison's lead and give extra weight to any of the 8, it would be the first one, deny the application out of hand. A perusal of the record will show that this was the most important issue TURN pursued. But we will let them stand as equals.

TABLE 3  
Issues Addressed by TURN\*

<u>No.</u>	<u>Description</u>	<u>Addressed BY DRA?</u>	<u>Condition Reference</u>	<u>TURN Brief Reference</u>	<u>D.88-01-063 Reference</u>
1.	Deny Application	No	N.A.	1	22,23
2.	Affiliated QF Sales	Yes	SD-11	31	34,35
3.	Access By Competitors To Edison Resources	No	E-8	24,41	34
4.	Franchise Fees	Yes	E-14	42	38
5.	Access To Affiliate Books And Records	No	E-1,4	19,23	24
6.	CPUC Ability To Constrain Diversification	No	SD-7,16,17 E-5,9,10 12,13	26,28,30	31
7.	Payment For Use of Edison Resources	No	E-2,8	8,39	28,34
8.	Payment By Edison For Goods and Services	No	E-2,8	11,39	28,34

\*See TURN Witness Hancock's Exhibit 16, pp. 5 & 6, and D.88-01-063, pp. 16 & 17.

Edison and the Division of Ratepayer Advocates (DRA) were at odds in this proceeding on only two issues, 2 and 4 on Table 3. TURN joined with DRA on both those issues, but the DRA position was not accepted by the Commission and hence we cannot say that TURN made a substantial contribution on either issue. The record will show that TURN's proposal for Condition 1, access to books and records, was substantially adopted. Condition 4 was also a part of that general issue. However, the Commission modified Condition 4 as proposed by Edison to include only the clarifying phrase, "as necessary or required." (D.88-01-063, p. 29) The Commission did not adopt the major change urged by TURN which would have required employees of Edison's holding company and affiliates to appear without subpoena before the Commission. We conclude that TURN's position on the issue of access to affiliate books and records, although only partially adopted, constituted a significant contribution to that general issue. That was the only issue on which TURN prevailed. Therefore, for purposes of calculating TURN's award, we find TURN prevailed on one-eighth of the issues it raised.

#### Amount of Compensation

As noted previously, TURN breaks its request into four general categories: prehearing, hearing and posthearing, preparation of the request, and out-of-pocket expenses. TURN requests 33% of its expenses for hearing and posthearing, and 100% for the other three categories.

Taking prehearing expenses first, TURN claims that the nature of this case precluded allocation of its effort by issues, that because Edison provided insufficient information in its initial showing, TURN was forced into a detailed exploration of Edison's current and planned diversification activities, and the information finally furnished by Edison through TURN data requests was very voluminous, requiring extensive time to review by TURN's

attorney and consultant. Also, TURN pleads that its team was on somewhat of a learning experience with this type of application.

We cannot accept TURN's plea that it was not possible to allocate time by issue in the initial phases of this proceeding. Almost all the issues in this case parallel those in the San Diego Gas & Electric Company (SDG&E) request to form a holding company in Application (A.) 85-06-003, decided by D.86-03-090. Indeed, it was the list of conditions coming out of litigation in that application which formed the basis of the agreement between Edison and DRA in this case. A check of Table 3 will show that only one issue, deny the application, did not have a specific relationship to the SDG&E conditions in some way. The plea by TURN that it did not know what the issues would be and that its team was learning rings hollow. TURN's attorney should have known what the issues would be because he participated in the SDG&E case for Utility Consumers' Action Network.<sup>5</sup> TURN's consultant also should have been familiar with the issues in a case of this nature. She testified in Exhibit 16, pp. 4-5, that she has participated in at least five proceedings involving holding company and diversification issues in states such as Maine, Ohio, Maryland, Illinois, and Vermont.

We have previously concluded that TURN has made a substantial contribution on only one of eight issues it addressed. Following the precedent we set in D.85-08-012 in A.84-03-30 of Southern California Gas Company, we will allow only one-eighth of TURN's prehearing expenses. In D.85-08-012, a decision which established some guidelines for determining appropriate compensation for intervenors, the Commission said:

"If in our opinion an intervenor makes a substantial contribution on all or most of the

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<sup>5</sup> See Declaration of Joel R. Singer attached to TURN's request for compensation filed April 1, 1988, and the list of appearances attached to D.86-03-090.

issues it addresses, or if we determine that the significance of the issues on which the intervenor prevails justifies full compensation even though there hasn't been strict allocation (D.85-02-027), the intervenor should receive compensation for all of its initial preparation time. If the intervenor is less successful, in our judgement, initial preparation time may be compensated on a pro-rata basis, according to the proportion of successful issues to total issues addressed."

In this proceeding, TURN did not make a substantial contribution on most of the issues it addressed nor was the issue it did contribute to significant in the overall. We will treat TURN's out-of-pocket expenses in the same manner.

We will adopt TURN's request for one-third of its hearing/posthearing time as reasonable, recognizing that it is difficult to segregate time to issues during our hearing processes and in particular when only a few days of hearing are held.

We agree with Edison's contention that TURN spent unnecessary time in the preparation of its request for compensation trying to justify the unjustifiable. It should have been clear to TURN on what issue it prevailed and TURN clearly knew what the issues in the proceeding would be. Considerable time was devoted in the request attempting to justify 100% of the prehearing costs. We will adopt 50% of the requested amount as reasonable for preparing the request.

The \$125 per hour for attorney and expert witness time appears reasonable in view of their qualifications and experience and will be adopted as will the other non-hourly expenses detailed in TURN's request.

Table 4 contains the application of the conclusions we come to above. It can be directly compared to Table 1, the detail of TURN's request. Prehearing time is prorated on a one-eighth basis, hearing/post hearing one-third as requested by TURN, time spent on preparation of the request is cut 50%, and out-of-pocket expenses are prorated on the relationship of attorney and expert amounts allowed on Table 4 versus Table 1 with the exception that fixed costs, such as travel, are allowed 100%. The fixed costs were totaled from Exhibits 1 and 3 attached to TURN's request.

TABLE 4

SUMMARY OF COMPENSATION AWARD

## I. ATTORNEY TIME

<u>Classification</u>	<u>Hours Claimed</u>	<u>Hourly Rate</u>	<u>Factor</u>	<u>Amount</u>
Pre-Hearing	88.9	\$125.00	1/8	\$1,389.06
Hearing and Post-Hearing	64.9	125.00	1	8,112.50
Compensation Request	17.0	125.00	1/2	<u>1,062.50</u>
Total Attorney Time				\$10,564.06

## II. EXPERT TIME

<u>Classification</u>	<u>Hours Claimed</u>	<u>Hourly Rate</u>	<u>Factor</u>	<u>Amount</u>
Pre-Hearing	180	\$125.00	1/8	\$2,812.50
Hearing and Post-Hearing	20.8	125.00	1	<u>2,600.00</u>
Total Expert Time				\$5,412.50

## III. OUT OF POCKET EXPENSES

	<u>Amount Claimed</u>	<u>Amount</u>
Attorney	\$1,876.69	\$1,191.80 (1)
Consultant (Includes Support Staff)	2,193.53	<u>1,154.37</u> (2)
Total Expenses		<u>\$2,346.17</u>
<b>TOTAL AWARD</b>		<b>\$18,322.73</b>

(1)  $533.76 + (1,876.69 - 533.76) \times 49\% = 1,191.80$

(2)  $861.27 + (2,193.53 - 861.27) \times 22\% = 1,154.37$

Findings of Fact

1. D.88-03-018 dated March 9, 1988 found TURN eligible for compensation under Article 18.7 of the Rules.

2. TURN has requested compensation of \$50,520.22 for its participation in this proceeding and for what it claims is a substantial contribution of D.88-01-063.

3. As can be seen from D.88-01-063, TURN prevailed on only one of the eight issues it raised in this proceeding.

4. TURN's position on the issue of access to affiliate books and records was substantially adopted by the Commission in D.88-01-063 and constituted a substantial contribution to the decision in that regard.

5. Because TURN's attorney and expert witness were very experienced with the issues in this proceeding, they could have allocated their prehearing time to the various issues but did not.

6. Because TURN made a substantial contribution on only one of the eight issues it raised, only one-eighth of TURN's prehearing and out-of-pocket expenses should be reimbursed, except for travel and other fixed costs which should be reimbursed at 100%. ✓

7. As requested by TURN and not opposed by any other party, TURN should be reimbursed for one-third of its hearing and posthearing attorney and expert witness costs.

8. Because TURN spent unnecessary time attempting to justify costs which the Commission had clearly not allowed in previous decisions on compensation because the intervenor did not prevail on a majority of the issues it raised or the issue it did prevail on was not significant in the overall, TURN should be awarded only 50% of the cost of preparing its request.

9. Compared to other recent fees the Commission has adopted and considering the qualifications and experience of TURN's attorney and expert witness, \$125 per hour is a reasonable fee for their services.

10. The other expenses incurred by TURN for such items as travel, communications, reproduction, etc., as allocated herein are reasonable.

11. An award of \$18,322.73 to TURN for its participation in this proceeding as calculated on Table 4 and reflecting the above findings is reasonable.

Conclusions of Law

1. TURN has complied with the provisions of Article 18.7 of the Commission's Rules and should be awarded \$18,322.73 for its substantial contribution to D.88-01-063 on one of the eight issues it raised in this proceeding.

2. Because the work to earn the award has already been done, this order should be effective today.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall pay to Toward Utility Rate Normalization (TURN) \$18,322.73 within 15 days from the effective date of this order.

2. Edison shall also pay interest to TURN, calculated at the three-month commercial paper rate, on the principal amount of the award ordered in Ordering Paragraph 1 commencing on June 15, 1988, and continuing until payment of the award is made.



3. In its first general rate case or attrition proceeding following this decision, Edison shall include in its revenue requirement an additional amount equal to the award and interest granted by this decision.

This order is effective today.

Dated     AUG 24 1988    , at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. O'HANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weisser, Executive Director

Calculation Of TURN's Reasonable Compensation  
In Application No. 85-05-007

I. ATTORNEY TIME

<u>Stage of Proceeding</u>	<u>Hours</u>	<u>Gross Amount<sup>a/</sup></u>	<u>Proration Percentage</u>	<u>Reasonably Compensable Amount</u>
Hearings Time	30.0 <sup>h/</sup>	\$3,750.00	33.33 <sup>h/</sup>	\$1,250.00
Preparation of Request for Compensation	17.0 <sup>h/</sup>	\$2,125.00	50.00 <sup>h/</sup>	\$1,062.50
All Other Stages <sup>h/</sup>	253.6 <sup>h/</sup>	\$31,700.00	7.14 <sup>h/</sup>	\$2,264.29
Total	300.6	\$37,575.00		\$4,576.79

II. EXPERT WITNESS TIME

<u>Stage of Proceeding</u>	<u>Hours</u>	<u>Gross Amount<sup>a/</sup></u>	<u>Proration Percentage</u>	<u>Reasonably Compensable Amount</u>
All Stages (Total)	242.5	\$30,312.50	7.14 <sup>h/</sup>	\$2,165.18

III. OUT-OF-POCKET EXPENSES

<u>Type of Expenses</u>	<u>Gross Amount</u>	<u>Proration Percentage</u>	<u>Reasonably Compensable Amount</u>
Support Staff	\$ 982.50	7.14 <sup>h/</sup>	\$ 70.18
Photocopying, Postage and Long Distance Calls	\$1,342.93	7.14 <sup>h/</sup>	\$ 95.92
Other Consultants	\$1,211.03	7.14 <sup>h/</sup>	\$ 86.50
Fixed Expenses	\$ 533.76 <sup>h/</sup>	100.00 <sup>h/</sup>	\$ 533.76
Total	\$4,070.22		\$ 786.36

IV. TOTAL

Total Reasonable Compensation: \$7,528.33

- a/ These gross amounts of expense were calculated based upon a \$125.00 hourly rate for TURN's attorney. See TURN's Request for Compensation, Table One.
- b/ This figure includes prehearing conference time, as well as time spent during the hearings in this proceeding. The figure was derived from the transcripts.
- c/ This percentage is based upon the analysis in Section III.B.2. of this Response ( $1/3 = 33.33\%$ ).
- d/ This number is derived from page 13 of TURN's Request for Compensation where TURN requested \$2,125.00 ( $\$2,125/(\$125/\text{hr.}) = 17.0 \text{ hrs.}$ ).
- e/ This percentage is based upon the analysis in Section III.B.3. of this Response ( $1/2 = 50.00\%$ ).
- f/ This category includes Initial General Preparation, Discovery, Testimony Preparation, Hearing Preparation, and Preparation of Briefs. Although TURN's time spent in the Discovery stage should not be compensated because TURN's discovery effort focused almost entirely on an unsuccessful issue, Edison has calculated TURN's reasonable compensation for that time on a pro rata basis. TURN has not provided the data necessary to separate discovery time from other prehearing time.
- g/ This number is derived from Table One in TURN's Request for Compensation. TURN's attorney's actual hearing time (30.0 hours) and time spent preparing TURN's Request for Compensation (17.0 hours) were subtracted from TURN's attorney's total time (300.6 hours) to arrive at this figure.
- h/ This percentage is based upon the analysis in Sections III.B.1., III.B.2., and/or III.B.4. of this Response ( $1/14 = 7.14\%$ ).
- i/ This gross amount of expense was calculated based upon a \$125.00 hourly rate for TURN's expert witness. See TURN's Request for Compensation, Table One.
- j/ This figure was calculated from Table One of TURN's Request for Compensation based upon the analysis in Section III.B.4. of this Response. The time spent by the Support Staff of TURN's witness and the consultants of TURN's witness (other than Support Staff) as well as the expenses of photocopying, postage, and long distance were subtracted from TURN's total out-of-pocket expenses (\$4,070.22) to arrive at this figure ( $\$4,070.22 - (\$982.50 + \$1,342.93 + \$1,211.03) = \$533.76$ ).
- k/ This percentage is based upon the analysis in Section III.B.4. of this Response.

(End of Appendix A)

Findings of Fact

1. D.88-03-018 dated March 9, 1988 found TURN eligible for compensation under Article 18.7 of the Rules.

2. TURN has requested compensation of \$50,520.22 for its participation in this proceeding and for what it claims is a substantial contribution of D.88-01-063.

3. As can be seen from D.88-01-063, TURN prevailed on only one of the eight issues it raised in this proceeding.

4. TURN's position on the issue of access to affiliate books and records was substantially adopted by the Commission in D.88-01-063 and constituted a substantial contribution to the decision in that regard.

5. Because TURN's attorney and expert witness were very experienced with the issues in this proceeding, they could have allocated their prehearing time to the various issues but did not.

6. Because TURN made a substantial contribution on only one of the eight issues it raised and that issue was not significant overall in this case, only one-eighth of TURN's prehearing and out-of-pocket expenses should be reimbursed, except for travel and other fixed costs which should be reimbursed at 100%.

7. As requested by TURN and not opposed by any other party, TURN should be reimbursed for one-third of its hearing and posthearing attorney and expert witness costs.

8. Because TURN spent unnecessary time attempting to justify costs which the Commission had clearly not allowed in previous decisions on compensation because the intervenor did not prevail on a majority of the issues it raised or the issue it did prevail on was not significant in the overall, TURN should be awarded only 50% of the cost of preparing its request.

9. Compared to other recent fees the Commission has adopted and considering the qualifications and experience of TURN's attorney and expert witness, \$125 per hour is a reasonable fee for their services.