Decision 89 03 018 MAR 8 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Order Instituting Investigation on the Commission's motion into implementing a rate design for unbundled gas utility services consistent with policies adopted in Decision 86-03-057.	I.86-06-005 (Filed June 5, 1986)
	R.86-06-006 (Filed June 5, 1986)
And Related Matters.	Application 87-01-033 (Filed January 20, 1987)
	Application 87-01-037 (Filed January 27, 1987)
	Application 87-04-040 (Filed April 20, 1987)

O P I N I O N

I. Summary

By this decision we find Toward Utility Rate Normalization (TURN) eligible to receive compensation as an intervenor in the series of proceedings which have resulted in our restructuring the way in which investor-owned natural gas utilities provide gas in California. We also grant TURN's request for compensation; we provide TURN compensation totaling $245,373.92 for its substantial contribution to our decisions. The compensation is allocated between the major investor-owned natural gas utilities as follows: payment by Pacific Gas and Electric Company (PG&E) of $114,221.56, payment by Southern California Gas Company (SoCal) of $110,295.58, and payment by San Diego Gas & Electric Company (SDG&E) of $20,856.78. We

require these sums to be paid within 10 days of the effective date of this order.

II. TURN's Request for Compensation and Motion to Modify the Procedure for Reply

A. Background

On January 5, 1989 TURN filed a request for compensation for its participation in this Commission's epic proceeding to restructure the natural gas industry. The proceeding commenced with the issuance of R.86-06-006 and I.86-06-005, which proposed a new industry structure and corresponding rate design, respectively. SoCal, PG&E, and SDG&E were made respondents to the Commission's investigation and rulemaking. The proceeding took shape with Decision (D.) 86-12-010, which refined the industry structure after receipt of public comment and D.86-12-009, which laid out a detailed road map for rate design in the form of exemplary rates following public hearings. Challenges to these decisions were considered in D.87-02-029, D.87-03-044, and D.87-05-046. A year and a half after the issuance of the orders instituting this proceeding, the Commission issued D.87-12-039. In that order, the Commission adopted sales and throughput forecasts, refined its allocation factors, and allocated revenues to the various services to be offered to different customer classes, to enable the utilities to file tariffs to implement the new industry structure. Challenges to this order were disposed of in D.88-03-041 and D.88-03-085. Finally, the utilities tendered advice letters to implement the terms of these successive decisions.

TURN claims that its substantial contributions to these decisions entitle it to compensation in the amount of $245,373.92. The respondent utilities concur with TURN. These four parties have executed a "Settlement Agreement Regarding Intervenor Compensation." The agreement has been appended to TURN's request as "Attachment A."

Although the amount requested and the allocation of the compensation among the utilities have been reduced to a settlement, TURN's request is filed under the provisions for Intervenor's Fees and Expenses (Article 18.7), rather than the provisions for Stipulations and Settlements (Article 13.5) of the Commission's Rules of Practice and Procedure. Thus, we are guided by the precedent we have established on the subject of intervenor compensation, rather than the principles which shape our consideration of proposed settlements.

Analysis of the merits of TURN's request for compensation would ordinarily be provided by the parties' responses to the request. Since they stipulated to the requested award, the respondent utilities did not comment on TURN's request. In the case of a settlement, our rules require that the parties state their positions on the merits prior to the filing of the settlement. A settlement, in the absence of the parties' testimony on the issues in controversy, provides no basis for a finding that the settlement is in the public interest. Neither the parties' response nor statements of position were provided in this case.

In order to make the finding that TURN should be compensated in the amount of $245,373 in these gas proceedings, we have undertaken the time-consuming task of evaluating the claims TURN made in its settlement agreement without the benefit of any comments on the claims. While the ratepayers may have saved money from not having to compensate the intervenor for preparation of the compensation claim, they are not well served by the commitment of this Commission's resources to develop all the sides of the merits of TURN's request. In the future, we will require the intervenor to prepare and file a fully supported claim for compensation and will permit the parties to state their positions on the compensation requests before entertaining a settlement of an intervenor's claim of compensation.

B. TURN's Request to Shorten Time for Reply

TURN has also requested the Commission to shorten the applicable time for parties to respond to a request for compensation from 30 days to 10 days.[1] TURN proposes that if a party intends to file comments, it would have the normal 30-day period in which to do so. If no party intends to file, the Commission could decide the matter without waiting for the full 30-day period to run.

We do not find that a shortening of time would serve the public interest in this case. Given the complexity of issues involved, the number of hours claimed, and the amount of the requested compensation award, we believe the 30-day response period should be retained. Thus, TURN's request for an order soliciting notice of intent to respond in 10 days is denied.

It may be noted, however, that as of this date no party has responded to TURN's request for compensation.

C. Timeliness of Request for Compensation

Public Utilities (PU) Code Section 1804(c) and related Rule 76.56 allow an intervenor 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. TURN points out that D.86-01-034 interpreted those provisions to allow a customer who believes that the Commission will find that he is eligible to file a request for compensation before a finding of eligibility is made at the risk that the customer later will be found ineligible. Accordingly, we will rule on TURN's request for

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1 Rule 76.56 of the Commission's Rules of Practice and Procedure provides, "Within 30 days after service of the request, the Commission staff may file, and any other party may file, a response to the request. The customer may file within 15 days thereafter a reply to any such response."

a finding of eligibility and concurrently dispose of its request for compensation.

D. TURN's Request for Finding of Eligibility

TURN had filed Requests for Finding of Eligibility for Compensation in these consolidated proceedings. They were filed on September 4, 1986 in R.86-06-006, on October 7, 1986 in I.86-06-005, and on September 4, 1987 in the consolidated implementation proceeding, Application (A.) 87-01-033 et al. The Commission has not yet acted on those requests.

R.86-06-006

The Commission issued this OIR into proposed refinements for the new regulatory framework for gas utilities in June of 1986. TURN filed its request for finding of eligibility on September 4, 1986. Rule 76.54 of the Commission's Rules of Practice and Procedure requires such a request to be filed within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. Since the Commission contemplated that the rulemaking would be based upon filed comments, rather than testimony at hearings, TURN filed within 45 days after the date that parties' comments were due, which was July 21, 1986.

TURN invokes Rule 76.54(a)(1) to satisfy the requirement that it show that participation in the hearing or proceeding would pose a significant financial hardship. That rule provides that if the customer has met its burden of showing financial hardship in the same calendar year, as determined by the Commission under Rule 76.55, the customer shall make reference to that decision by number to satisfy the requirement. TURN has referred to D.86-02-039, in which TURN was found to have met its burden of showing financial hardship. Since the finding was made in 1986, the same year in which the request for finding of eligibility was made, TURN has shown that participation in R.86-06-006 would pose a significant financial hardship for it.

Rule 76.54(a) also requires a statement of issues that the customer intends to raise in the hearing or proceeding, an estimate of the compensation that will be sought, and a budget for the customer's presentation. At the time TURN made its request, it had already stated the issues it intended to raise in the form of its filed comments. It estimated a budget of up to $16,000 for its participation in the case, based on about 100 hours of attorney time at $150 per hour plus about $1,000 of other expenses. Thus, TURN has satisfied the other requisites of Rule 76.54(a) as well.

I.86-06-005

In this investigation into implementing a rate design for unbundled gas utility services consistent with policies adopted in D.86-03-057, TURN filed a request for finding of eligibility for compensation on October 7, 1986. The filing of concurrent briefs may be deemed to be the close of the evidentiary record for the purposes of Rule 76.54. Briefs were filed on September 18, 1986. TURN's request was filed within 19 days thereafter and is timely.

TURN again cites D.86-02-039 for the finding that TURN would incur significant financial hardship if it were not compensated for its participation in Commission proceedings.

As in its request for compensation for the Rulemaking proceeding, TURN points out that it has addressed virtually all of the major issues in this generic rate design proceeding in its testimony and briefs. A further statement of issues would be pointless.

It estimates a maximum request of up to $47,000 for its work in this case. That figure is based upon about 250 hours of attorney/witness time at an hourly rate of $175, plus about $3,250 of other expenses. Thus, TURN has also shown eligibility for compensation under Rule 76.54(a) in this case.

A.87-01-033, et al.

The gas utilities were ordered to file applications to implement the Commission's rate design decisions arising out of

I.86-06-005 and R.86-06-006. TURN requested a finding of eligibility on September 4, 1987, seven days after briefs were filed. Although an oral argument to the Commission sitting en banc followed, we find that TURN has filed its request within the 45 days contemplated in Rule 76.56.

TURN performed its work on this phase during 1987 and 1988. We determined that TURN's participation in Commission hearings would cause it significant financial hardship in 1987 unless it was compensated for its role in the SoCal Gas Fall Consolidated Adjustment Mechanism (D.87-04-032) and would suffer significant financial hardship during 1988 due to participation in our investigation into alternative regulatory frameworks for local exchange carriers (D.88-07-035). Thus, TURN has made its showing of significant financial hardship for this phase of the gas proceeding.

Its September 4, 1987 request for finding of eligibility states that it has addressed virtually all of the major issues in the case, with particular emphasis on transition costs, sales forecasts, balancing account allocation, and the allocation of conservation costs.

TURN stated that it might request up to $135,000 for its work in the case. This figure is based on 700 hours of attorney/witness time. TURN itemized by issue the 632.33 hours it had already been devoted to the case. The amount is premised on a base rate of $160 per hour plus an enhancement of $25 for Florio's dual role as attorney and witness.

TURN has met all of the requirements of Rule 76.54(a) and should be found eligible for compensation in A.87-01-033.

III. TURN's Substantial Contribution

Rule 76.58 requires us to determine whether TURN made a substantial contribution to the cited decisions. In addition, we

must describe the substantial contribution, and determine the amount of compensation to be paid. The term "substantial contribution" as defined in Article 18.7 requires us to make a judgment that:

> "...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." (Rule 76.52(g).) (Emphasis added.)

In order to evaluate TURN's claimed contribution to the gas proceedings, it will be necessary to review each of the Commission's decisions and examine the impact of TURN's participation in those cases. Thereafter, we will review the costs submitted by TURN and make the appropriate award.

TURN's Contribution to I.86-06-005 and R.86-06-006

I.86-06-005 and R.86-06-006 had their roots in D.86-03-057, our seminal decision authorizing the utilities to file short-term natural gas transportation tariffs. There, we resolved to restructure the California natural gas industry in response to then-recent changes in the interstate natural gas marketplace. Since utility service was redefined to consist of transmission and distribution service, as well as the sale of gas as a commodity, the costs of providing those services also had to be defined. In D.86-03-057, the Commission had determined to use marginal cost principles to derive the costs of providing these unbundled services and recognized the need for further investigations into rate design proposals.

TURN's Contribution to I.86-06-005

Interested parties filed comments on the Commission's proposal to unbundle utility gas service. Subsequently, the Commission initiated the OII (I.86-06-005) to explore the details

to be resolved in order to implement fully unbundled services and rates. The Commission was particularly interested in the use of marginal costs to allocate the utility revenue requirement among various customer classes, and to design rates for each customer class. Since the Commission intended gas utilities to offer their services to all noncore customers on an unbundled basis, the pricing for these services also had to be unbundled.

TURN filed its comments on April 11, 1986. It proposed that transmission capacity be allocated under a bidding system. This suggestion was acknowledged in the OII, where the Commission indicated that it would like to see this idea developed as an alternative to a capacity allocation method based on the shortage cost concept. Therefore, TURN made a substantial contribution as defined in Rule 76.52(g).

TURN's Contribution to R.86-06-006

R.86-06-006 was issued to advance specific proposals to fine-tune and to put into practice the new regulatory framework adopted by D.86-03-057. The order defined the core and noncore gas procurement markets and the level of utility service to these markets; options available under unbundled services, curtailment of gas/transmissions service, and revisions to the Supply Adjustment Mechanism (SAM).

We divided utility services into the two elements of unbundled service, that is, procurement of gas and transmission of gas. The utilities' procurement of the gas commodity was subject to different rules depending on whether the gas was intended for the core, noncore, or core-elect market. Larger customers were allowed to elect core procurement status for all or a part of their gas requirements. This flexibility had the potential to increase the cost of core gas if a large customer contracted for a quantity of core supply as a hedge but decided not to take it when alternate supplies were cheaper. Our solution was to impose a take-or-pay requirement on core-elected volumes. We heeded TURN's advice to

limit take-or-pay liability to 50% of contracted volumes, because we agreed that any greater financial restraint on customers' abilities to participate in market demand for gas might stifle the potential for beneficial price competition between oil and gas.

Unbundled rates would be charged for gas as a commodity and for the transmission of gas. Core customers would pay for the firmest transmission service through fixed and variable rate elements added to the commodity cost of core gas. Noncore and core-elect rates were to consist of a commodity rate comprised of the weighted average cost of gas (WACOG) for the customer's supply portfolio (i.e., either core or noncore), and transmission rates consisting of a fixed monthly customer charge, a monthly demand/standby charge based on the quantity of transmission service, and transmission usage rate.

Another primary task was to identify the utilities' nongas costs and provide for their recovery through the above rate design. Transmission was to be further unbundled into rate elements and service levels. In order to arrive at reasonable rates for transmission, it became necessary to identify which services would collect the various constituents of the utilities' nongas costs.

Nongas costs were generalized as costs for utility's own system (the margin), plus demand charges from pipelines which utilities cannot avoid. The Commission concurred with TURN that there must be an across-the-board allocation of nongas costs.

TURN questioned whether a program allowing larger customers to elect short-term transportation could be designed which would not force core ratepayers to ultimately bear all of the utilities' fixed costs and the expense of high-priced gas. The utilities' fixed costs included pipeline take-or-pay obligations, or fixed costs associated with a particular supplier, which Federal Energy Regulatory Commission (FERC) had authorized pipelines to recover from their local distribution company customers.

We were sympathetic to TURN's concerns that the core class of ratepayers not be saddled with costs which proved to be "uneconomic" in the new competitive gas market.[2] To ensure that costs which are not directly assignable to a particular customer class are fairly allocated, we designated them as "transition costs" to be collected from all customer classes. These costs are then allocated to monthly and usage rate elements for transmission service, which remains a monopoly. We determined that some of the risk of recovery of these costs must be spread in a manner which ensures that utilities encourage pipelines to remain competitive with other fuels.

We recognized the possibility, raised by TURN, that high cost gas supplies would be routed into the core portfolio so that the utilities could recover their uneconomic procurement costs from captive ratepayers. We required the utilities to keep a separate account to track expenses and revenues connected with noncore procurement. We also determined that transfers from one portfolio account to another should be booked at the weighted average price to protect against higher priced increments of short-term supply gas being "assigned" to the core market's portfolio.

We find that TURN has made a substantial contribution as defined by Rule 76.52(g) by bringing the problem of fixed cost recovery to our attention, helping to refine the definition of transition costs, and by suggesting revenue recovery which balances

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2 For example, fixed demand charges paid by SoCal for gas purchased from PITCO were ordered to be recovered in the volumetric portion of SoCal's transmission rates. FERC-mandated take-or-pay charges would be allocated to all customers through the transmission rate or demand charge, except for those who had entered into long-term fixed price contracts that did not provide for imposition of the take-or-pay costs. Likewise, the cost of purchasing higher priced pipeline gas to avoid potential take-or-pay liabilities would be allocated as a transition cost to all customers.

fairness to ratepayers with the need to encourage fuel competition. Our decisions have been responsive to TURN's primary policy argument that as we restructure the California gas industry to enable the local distribution companies to participate in a newly competitive market, we should safeguard the economic position of ratepayers who are disadvantaged by competition but are "captive ratepayers" of the utilities. Therefore, we find under Rule 76.58 that TURN has made a substantial contribution to I.86-06-005 and R.86-06-006.

TURN's Contribution to
D.86-12-009 and D.86-12-010

These two decisions set forth the final policies to restructure natural gas regulation in California. D.86-12-010 took into account comments filed in R.86-06-006. D.86-12-009 addressed the allocation of costs and rate design for transmission and procurement which were the subject of I.86-06-005.

D.86-12-010

This decision adopted numerous changes to the rules for unbundled gas utility service which had been proposed in the OIR.

We announced in D.86-03-057 that a critical aspect of our unbundled rate design is the ability of customers to select whatever quality of transportation service they desire through their choice of contribution to the fixed costs of the utility system. TURN's proposal to base rates on short-run marginal cost including a shortage cost component caused us to rethink our original approach, which provided four distinct service priority levels. As an alternative, we have allowed noncore customers to negotiate a transmission priority charge to entitle them to enhanced priority. Curtailment of the noncore customer class is to be based on the value each customer places on reliability, as evidenced by its willingness to pay. By bidding for priority, the customer indicates the value it places on shortage. Priority of

transmission service is thus based on shortage cost, as initially suggested by TURN.

In the OIR, we feared that there could be excessive switching by noncore customers to the core portfolio if the WACOG for the core portfolio became lower than that for the noncore portfolio. We proposed a rule that the utilities should petition to establish a new core commodity rate for new core-elect customers if their presence in the core market caused increases in the core WACOG, or alternatively, that the utilities establish a separate supply portfolio for core-elect procurement customers.

Comments to the OIR pointed out the flaws in our proposal. TURN recommended that there be a ban on switching to elected core procurement whenever the core portfolio is cheaper than the noncore portfolio. This recommendation had the advantages of being simple and easy to implement, as well as accomplishing our goal of preventing the overall cost of the core portfolio from increasing solely in response to noncore customers switching into the core portfolio. Thus, we adopted TURN's proposed portfolio switching ban.

We also considered the potential costs to core customers resulting from the failure of core-elect customers to purchase gas which they had contracted for. Our OIR proposed a 50% take-or-pay mechanism. We realized this had the potential to deter core election and did not necessarily provide core customers with appropriate compensation. Thus, we agreed with TURN that elected core procurement customers which do not use their full contracted quantities on a yearly basis should be liable for unavoidable or minimum charges which would reflect any take-or-pay costs, demand charges, minimum bills, or supply reservation charges which the utility incurs as a result of that customer's failure to purchase its contract amount of gas, instead of being liable for 50% of contracted volumes.

The issue of curtailment was also discussed in the context of service to wholesale customers. Wholesale customers should designate their purchases by priority, specifying quantities at each level to be purchased, according to TURN. To the extent wholesale customers purchase utility gas supplies, that supply should continue to be served at parity with retail service of the same priority. TURN preferred noncore capacity priority to be assigned based on a bidding system. We agreed with TURN that wholesale customers should designate their gas purchase requirements by priority and that gas to wholesale customers should be provided at parity with retail service of the same priority.

Perhaps the most daunting aspect of the Commission's restructuring of the natural gas industry were the changes in ratemaking and accounting necessary to implement our policies. The Division of Ratepayer Advocates (DRA), SoCal, PG&E, SDG&E, and TURN entered into a stipulation regarding the implementation of these changes. The agreement provided for partial, rather than total, elimination of balancing account type treatment for noncore fixed costs for an interim two-year period, the allocation of any balances in the utilities' SAM balancing account at the time of an implementation decision, and a schedule to implement this and the OII decision, as well as schedules for future cost allocation and gas cost proceedings.

We adopted the stipulation. Although the stipulation was presented to the Commission as a package, we perceive that it contains several terms which are intended to protect captive ratepayers during the transition period, and we recognize TURN's contribution to those portions of the stipulation.

Pipeline demand charges and transition costs are currently tracked through the pipeline's purchased gas account on an as-incurred basis. TURN proposed that both pipeline demand charges and settlement costs be recovered only as they are incurred. We agreed, and ordered that forecasted levels of demand

charges and transition costs be used in setting rates, but incurred costs should be booked into the core balancing and noncore memo accounts.

Finally, we adopted several of TURN's accounting proposals. The foregoing discussion demonstrates for the purposes of Rule 76.58, that TURN made a substantial contribution to D.86-12-010.

D.86-12-009

This decision identified the margin for PG&E, SoCal, and SDG&E. These dollars represent the revenue requirement excluding the cost of gas for each utility. The allocation of the revenue requirement to the core, noncore, and wholesale segments was a central issue in the case.

Three primary methodologies for costing utility nongas costs were recommended. These were long-run marginal cost, short-run marginal cost (advanced by TURN), and embedded cost. In the absence of adequate cost information, we adopted some guiding principles. We concluded that economic efficiency dictated that rates be based on marginal cost, not embedded cost. However, we recognized factors which persuaded us not to adopt the theoretically ideal model, which was inverse demand elasticity or Ramsey pricing.

We used embedded cost to allocate a utility's total fixed costs to the core, noncore, and wholesale market segments. The next step was is the detailed setting of rates within the noncore market. For this we decided to grant the utilities substantial flexibility. The resultant ability of noncore users to negotiate rates would reflect the demand elasticity of that particular customer. This would express the customer's shortage cost, and in a sense, give effect to TURN's recommendation that short-run marginal cost be the basis for at least pricing capacity. Our acceptance of TURN's priority charge proposal is detailed in our

discussion of TURN's contribution to the companion to this decision, D.86-12-010.

In this decision, we also refined our definition of transition costs[3] and allocated fixed transition costs among customers by use of an allocation factor.[4] Relatively "flat" allocation factors have been chosen for fixed transition costs consistent with TURN's argument that low priority customers should contribute some proportional cost of providing service until at least the time that the present excess capacity is reduced.

Administrative and General (A&G) expenses are not generally broken into functions and classifications. TURN made a convincing showing that A&G costs should be spread more on the basis of annual sales (equal cents per therm). We adopted a compromise between DRA and TURN: 50% of A&G expenses are to be classified as commodity-related and allocated on an equal-cents-per-therm basis, and 50% are to be classified in the same manner as Operation and Maintenance (O&M).

After the margin requirement had been allocated, our next step was to adopt a default rate format with its cost contents, describe the floor and ceiling rates governing contract rates, and describe the priority rate applicable to both contracting and noncontracting noncore customers.

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3 Transition costs are either commodity-related variable costs or fixed costs associated with excess interstate demand rights or excess intrastate transmission capacity.

4 An allocation factor is a number which when multiplied by the cost amount gives a total that will be assessed a market segment (or customer group). The factors are based on sales figures or customer numbers, namely, the ratio of these figures for each customer group during a specific period. Factors must reflect cost incurrence while at the same time recognizing that a certain amount of these costs are transition costs.

Rates for noncore customers would be determined primarily by negotiation between the utilities and their noncore customers within a band of flexibility. The floor rate is the SRMC plus shortage cost component as recommended by TURN.

We agreed with TURN that a customer's shortage cost is the most appropriate basis for pricing capacity and establishing an economically based priority system. TURN proposed to measure customer shortage cost through an annual auction/bidding procedure. Although the proposal had not been developed sufficiently for adoption, we found that it merited further consideration.

As to implementation of the baseline statute in the rate design for the residential class, we determined that the utilities' filings should continue to use the TURN adjustment, which relies on the fact that current baseline allowances are in excess of that required by statute. We conclude pursuant to Rule 76.58 that TURN has made a substantial contribution to D.86-12-009.

TURN's Contributions to D.87-03-044

This decision disposed of applications for rehearing and petitions for modification of our gas industry restructuring and gas rate design decisions. Rehearing of D.86-12-010 and D.86-12-009 was denied, but modifications to those decisions were made.

TURN had urged that transition costs be added to the default ceiling rate established by D.86-12-009. We said that to the extent that transition costs can be quantified that are in addition to the revenue requirement allocation process, they should be added to the ceiling rates, and adopted TURN's suggestion.

TURN's primary contribution to the unbundled rate design was the priority charge. We rejected challenges to the priority charge, relying in part on TURN's elaboration of how the priority charge would operate for different users and how curtailment for customers paying different priority charges would proceed. We agreed with TURN that the electric departments of PG&E and SDG&E

should designate a separately stated priority charge just as any other noncore customer. This would allow the electric utilities to obtain that level of service reliability that is most economical and appropriate for their electric ratepayers.

TURN again focused on the risk that core-elect customers might increase the core portfolio WACOG and recommended that if the portfolio switching ban is in effect at a given time, a core-elect customer should not be able to increase its contract volume in a renewal agreement. We agreed and modified the portfolio switching ban accordingly. TURN also pointed out the need for a "true-up" mechanism to ensure that noncore customers reimburse the utilities at the actual monthly spot WACOG, though their nominations for utility gas is made on the basis of a posted forecast price. We determined to review the problem in the implementation hearings. Other minor modifications recommended by TURN were adopted. Thus, we conclude that TURN made a substantial contribution to D.87-03-044.

TURN's Contribution to D.87-05-046

In D.87-05-046, the Commission made various modifications to its December orders (D.86-12-009 and D.86-12-010) which had established a new framework for natural gas rate design and regulatory policy. Two of the most significant modifications were requiring all gas transmission contracts to be available for public inspection, and establishing the default rate at embedded cost rather than at unscaled replacement cost.

TURN, along with the utilities, sought review of D.87-03-044. While they did not prevail in persuading the Commission to reconsider its decision in D.87-03-044 to reduce the ceiling or "default" rate for noncore customer classes from unscaled replacement cost to embedded cost, D.87-05-046 modified the earlier order in various respects.

TURN based its petition on a fear that if the utilities could not maintain their noncore throughput, the Commission would

reallocate more revenue requirement to the core. When the utilities enumerated their preexisting contractual and legislatively mandated duties, they described the possibility that they might not recover such costs which have been allocated to the noncore class. Wishing to minimize the risk of nonrecovery, the utilities suggested the costs be allocated to services and customer classes with the least elastic demand. TURN argued in favor of broad based recovery and an equitable assignment of incremental revenues to the core. For example, several parties had again proposed allocating A&G expenses on the same basis as O&M costs. We declined to modify our earlier decision, allocating 50% of A&G on an O&M basis, and 50% on a sales basis, pending the receipt of further information.

The utilities also sought relief from potential underrecovery of costs allocated to the noncore class due to long-term contracts signed when long term transportation was first authorized. TURN urged the that the shortfall not be imposed on the core class. Accordingly, we first directed the utilities to treat nonrecovered assigned costs as a form of transition cost and collect them on an equal-cents-per-therm basis. We decided that any shortfall of costs allocated to cogenerators due to the inconsistency between their allocated costs and revenues due to the operation of Section 454.5 of the PU Code would be allocated to the UEG class.

We had excluded all fixed costs from the volumetric rate component for the UEG load of combination utilities. This was intended to eliminate potentially conflicting incentives that might lead to uneconomic fuel use decisions by the utilities' electric departments. Since it is a gas-only utility, SoCal alone faced the risk of nonrecovery of fixed costs associated with its UEG load. TURN supported SoCal's request for similar treatment on the grounds that different rate designs for the gas utilities could interfere with the economic dispatch from power plants throughout the state

under the California Power Pool agreement. Partly due to TURN's comments, we reduced the risk to SoCal by decreasing the amount of its return on equity and associated taxes in the volumetric transmission rate for UEG customers.

We conclude, for purposes of Rule 76.58, that TURN has made a substantial contribution to D.87-05-046.

TURN'S Contribution to D.87-12-039

This decision was intended to implement in rates the major policy decisions which were made in December 1986. TURN spent the majority of its hours on this implementation proceeding. Consistent with its prior involvement, TURN emphasized the need to allocate transition costs fairly. TURN framed the issue as follows: "In its simplest terms, the question is merely one of cost allocation - in the process of dividing up the existing gas supplies into two separate portfolios (the key "change in regulation" that has occurred), who should pay for the high-cost contracts and commitments that neither portfolio would reasonably purchase today if given the choice?"

Although we concurred with the Canadian Producer Group that the determination of transition costs should be limited to whether a particular cost was incurred for the benefit of all ratepayers and was meant to be recovered from all ratepayers, we decided to use the equity principle which TURN advanced to calculate and allocate the transition costs.[5]

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5 Thus, a cost item was to be considered a transition cost if it resulted from a gas purchase contract, tariff, or arrangement which:

1. Took effect before the division of the supply portfolio pursuant to the December 1986 decisions,

2. Was initiated for the benefit of all ratepayers,

(Footnote continues on next page)

The parties presented two general methods of calculating what the transition costs were. TURN characterized these methods as "bottoms-up" or "tops-down." TURN itself advanced a bottoms-up method, which calculates transition costs as the difference between a benchmark price, such as the commodity price of Canadian suppliers for PG&E, and individual supply sources priced above the benchmark. Although we adopted DRA's tops-down approach, we recognize TURN's contribution to the quantification of these costs.

TURN suggested that the application of our principle that all customers will share in the recovery of pipeline demand charges requires SoCal, which uses an LIFO method of dispatching its storage gas, and consequently cannot forecast when pipeline demand charges will be "incurred," to track storage withdrawals for future allocation. We adopted that approach.

We also concurred with TURN that minimum bills assessed by POPCO, PGT, and California suppliers in excess of the core WACOG price should constitute a transition cost. This treatment of excess costs from these suppliers was consistent with TURN's goal of preventing the core customer from having to bear costs which are currently uneconomic in the new gas market.

We had determined that transition costs were to be allocated to core and noncore customers on an equal-cents-per-therm basis, except for storage-related transition costs. The question became how much risk of recovering transition costs should be placed on the utilities through the new rate design. TURN and

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(Footnote continued from previous page)

3. Was intended to be recouped from all ratepayers,

4. Results in costs in excess of a currently reasonable level.

other consumer representatives urged a significant risk on the utilities as a strong incentive for cost reduction. The utilities sought balancing account treatment. This controversy convinced us that the accounting and rate treatment must be tailored to the characteristics, that is, either fixed or variable, of each particular cost item. Thus, we amended our accounting and ratemaking treatment for each of the adopted transition cost items.

TURN's participation on this issue is reflected in our assignment of excess gas costs to the transportation volumetric rate. Our policy that the core ratepayers were never intended to be a "purchaser of last resort" for uncompetitive supplies was reinforced by our refusal to give excess gas costs balancing account treatment.

Sales forecasting had become a critical and hotly contested issue in this proceeding since the new industry structure places the utility at risk for recovery of the fixed costs allocated to noncore sales. The adopted sales forecast depends on the forecast methodology used. We adopted TURN's sales forecast methodology for PG&E and ordered that all utilities use this method in their next sales forecast update.[6]

Another task involved implementation of the priority charge concept, first advanced by TURN as a means of allocating transmission capacity. TURN supported SoCal's proposal to have customers bid priority charges for each season. We agreed with

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6 TURN's method has the virtue of recognizing that rates would have to be discounted to certain customers and that the discounts would result in decreased revenues. TURN first estimates the amount of sales that can be retained by discounting and then allocates costs in the amount of the discounted rates to those sales. As a result, the large sales base is retained and the utility does not suffer an automatic revenue shortfall. We also urged the parties to study the potential for upstream discounts and how they could be factored into TURN's model in the next update proceeding.

TURN that the bidding approach would reflect the value of short-term capacity better than a bundled approach and would accommodate the highly elastic customer who may also desire a high priority of service.

The actual forecast of sales was broken down by user categories. PG&E's UEG forecast presented problems because of the dramatic effect hydro conditions may have on the use of gas to generate electricity. TURN identified problems with PG&E's use of an average-year UEG sales forecast. This led us to adopt an average of PG&E's and DRA's forecast (which was based on a dry year scenario consistent with the most recent PG&E Energy Cost Adjustment Clause).

The allocation of various components of the embedded cost of service is dependent on usage during a "cold year." Thus, we needed to adopt a definition of a "cold year." We accepted TURN's suggestion that all three utilities use the same definition.

After sales forecasts were adopted for each utility, we had to construct the two gas procurement portfolios established for the new gas industry structure. TURN demonstrated that the FERC had reduced PG&E's demand charge and we recognized TURN's showing.

Each utility's revenue requirement was then allocated to the various customer classes on the basis of the throughput forecasts adopted in the earlier parts of the decision. Allocating the revenues required the Commission to use allocation factors to split each cost item among the different customer classes. The fact that nearly all of the allocation factors developed were directly related to our adopted throughput forecast highlights the significance of TURN's contribution to sales forecasting methodology.

Among the issues outstanding from D.86-12-009 were whether the forecast for EOR revenues, which are to offset the utilities' revenue requirement, should be forecasted as offsets to

the revenue requirement to be established in this initial case or not. SoCal and TURN convinced us that they should be.

The utilities' conservation costs were formerly recovered in both base rates and offset conservation program (Conservation Cost Account or "CCA") costs. TURN objected to PG&E's and SoCal's proposal to allocate all of these expenses as customer related, citing our characterization of conservation as a potential source of supply. On the basis of TURN's argument, we determined to allocate the remaining CCA balances as we had in the past, on an equal-cents-per-therm basis to all customer classes.

TURN's review of PG&E's calculation of noncoincident peak demand factors caused PG&E to correct errors in its calculations. TURN joined with PG&E and DRA to propose that the cost of lost and unaccounted for gas and company use of gas be allocated to all deliveries. We found that in the absence of evidence that these losses occur only at the distribution level, this "shrinkage" should be allocated to all deliveries at the transmission and distribution levels.

We foresaw that on the date we "cut over" to our new rate structure, balances in our CAM, GCBA, and PGA/SAM balancing accounts would still exist. TURN strongly favored allocation of those balances on an equal-cents-per-therm basis. We found there was no way to establish cost causation for the balances, and that balancing account balances fit our definition of transition costs. On that basis, we adopted TURN's approach.

Finally, we approached the task of calculating the actual rates to be paid by California customers. We had forecasted the total throughput, then allocated the fixed costs of each system to the different customer classes and calculated the two portfolio prices. The final step was assigning each cost item to a particular rate design component and calculating the final rates. The allocated fixed costs would comprise the rates for transmission, and the portfolio prices would be the procurement

prices. For the core market, those two rate components would be combined into a single, bundled rate for both services. Predictably, TURN focused its comments on core rate design.

Only SoCal had a residential customer charge which, at TURN's urging several years ago, we had included in the calculation of the baseline rate. We continued that treatment. However, SoCal and SDG&E wished to impose additional customer charges on the theory that there are embedded residential customer costs, and that cost-based rates should reflect those costs. TURN argued against this, pointing out that customer charges would result in a greater disparity between Tier 1 and Tier 2 rates, and that the utilities are already guaranteed 100% of margin recovery because of the core balancing account. This reasoning persuaded us to maintain the status quo with regard to the residential customer charge.

We were constrained by Section 739 of the PU Code to set baseline allowances for gas usage at between 50% and 60% of average residential consumption in the summertime and between 60% and 70% in the wintertime. SoCal pointed out that current allowances were well above the statutory requirement and proposed to reduce those allowances. We allowed a phase-in of SoCal's recommended changes, and we continued the TURN baseline adjustment mechanism, with the result that revenue increases due to reductions in baseline allowances must be used to reduce the baseline rate.

TURN brought its concern for the potential of core-elect customers to increase the core WACOG into the issue of wholesale procurement flexibility. We adopted a guideline to apply to wholesale customers electing into core procurement and renominating or changing their nominations. That is, if wholesale customers designate less than their high priority load as core procurement then they must provide at least a one-year notice to shift this high priority load back into the core portfolio. TURN reminded us, and we reiterated, that these shifts would be subject to the portfolio switching policies.

We required the utilities to track the difference between their forecast price of spot gas for noncore procurement and the actual spot price and include them in the next proceeding. This was intended to insulate noncore customers from the risk of error in the utilities' forecast of spot prices. We recognize that this mechanism was originally proposed by TURN.

We declined to adopt any further guarantees for the recovery of pipeline demand charges, such as a balancing account, due to our prior adoption of TURN's recommendation. That is, in D.86-12-010 we authorized a tracking account which will reconcile forecasted and actual pipeline demand charges.

On the basis of the foregoing discussion, we conclude that TURN has made a substantial contribution to D.87-12-039.

TURN's Contribution to D.88-03-041

This decision disposed of applications for rehearing of D.87-12-039. Although TURN did not seek rehearing, it responded to those applications. Generally, it is difficult to pinpoint a major contribution by a party to a Commission decision to deny rehearing. However, we recognize the high caliber of TURN's work and the credibility of its analysis of the issues. We took TURN's comments into account in denying rehearing, but TURN itself points out only one issue on which it believed it made a substantial contribution. That may be because TURN believed that the issue of customer charges, for which residential customers bear a heavy burden, most deserved its attention. We agree with TURN that its comments assisted the Commission to decide that cogeneration facilities with standby boilers should be treated as one customer in those cases where the standby boiler system only operates to the extent that the cogeneration system is not operating.

TURN's Contribution to D.88-03-085

This decision disposed of petitions to modify D.87-12-039. Here, TURN petitioned to modify our procurement

policies at least in the interim before the May 1, 1988 implementation date.

TURN suggested that core-elect procurement customers should pay the actual, rather than forecasted, core WACOG because it feared that core-elect customers could otherwise evade responsibility for gas costs incurred as a result of their purchases from the core portfolio when an undercollection in the core WACOG is reflected in the forecasted price. TURN proposed that the core gas balancing account not apply to the core-elect; rather, the core-elect would pay the current price each month. We believed that TURN had raised a good point, but judging from the response of other parties, we decided that it had not suggested the best solution. We suggested an alternative solution and asked the parties to the stipulation to try to work out an agreement along those lines. In the meantime, we allowed the program to begin with all core procurement customers paying the forecasted core WACOG.

We shared TURN's concern about the core-elect customers' option to purchase only a portion of their annual requirement from the core portfolio, for example, their wintertime needs, while spot gas is purchased in the summertime. The increased core demand during the high cost winter period could increase the core WACOG. TURN sought a restriction on core election that would prevent "winter only" core election. It noted that the PG&E tariff would solve the problem, since it required core-elect customers who obtain only a part of their requirements from the core portfolio to designate the portion of their annual contract quantity to be used each month. Although we feared that these restrictions could reduce core election, we allowed the utilities to impose such a requirement in their tariffs.

Palo Alto and Long Beach sought clarification of the nature of core transmission service for wholesale customers. They proposed a 12-month load balancing provision, allowing them to purchase and deliver to the utility more than their current

requirements in one season, then take the excess gas in another season, so long as the deliveries balanced at the end of a 12-month period. TURN indicated support, provided that quantities were limited and provided this was interim until decision in the storage and procurement investigation. We adopted TURN's proposal, including its conditions, on a temporary basis.

In the course of responding to the petitions of other parties, TURN pointed out an inconsistency in our treatment of noncore and wholesale customers. D.87-12-039 provided that if wholesale customers designated less than their high priority load as core procurement, then they must provide at least one year's notice to shift this load back into the core portfolio. This shift was also governed by the portfolio switching ban. Other noncore customers were governed only by the portfolio switching ban. TURN suggested that there was no need for the one-year notice. We deleted the notice requirement.

TURN's comments on our decisions and the comments of other parties have helped the Commission more fully develop the framework for gas utilities we adopted in D.87-12-039. This intervenor has made a substantial contribution to D.88-03-041 and D.88-03-085 for the purposes of Article 18.7 of our Rules.

TURN's Contribution to the Implementation of these Decisions

In Resolution No. G-2787 we adopted TURN's recommendation regarding termination fees for core-elect customers. In Resolution No. G-2796 we required transport revenues paid by customers reclassified as P2B customers to continue to flow into the core fixed cost account, consistent with TURN's position.

PG&E and SoCal were required to file tariffs implementing these gas rate design decisions. TURN states that it commented extensively on the utilities' drafts and that the filed advice letters reflect extensive revisions consistent with TURN's comments. Since we do not have any formal filings to confirm this,

we must rely on TURN's representations in its request for compensation. PG&E and SoCal concur with TURN, as evidenced by the stipulation between these parties. We will accept TURN's claim.

Conclusion

In its Request for Compensation, TURN states that its filing is considerably shorter than it otherwise would have been because a stipulation has already been reached with the primary interested parties. TURN submitted only summaries of its contributions and costs in place of the usual detailed discussion of substantial contributions and exhaustive itemization of time and expenses. TURN claimed that the time savings permitted by this approach were a substantial inducement for TURN to enter into a stipulated agreement.

We agree that, generally, ratepayers are served by a minimization of advocate's time used to prepare requests for compensation. However, ratepayers also need assurance that a factual basis exists for the award of compensation. No responses to the compensation filing or statements of position setting forth the controversy which became the subject of the settlement were provided in this case. Since TURN did not undertake a detailed exposition of its contribution, and other parties did not launch their customary criticism of the intervenor's claims, we closely examined the relevant decisions to ascertain the extent of TURN's contributions.

The ratepayers may have saved money from not having to compensate the intervenor for preparing and the utilities for contesting the merits of the compensation claim; however, they are not well served by the substantial commitment of this Commission's resources to develop all the sides of the merits of TURN's request. In the future, we will require intervenors to file a fully supported claim for compensation and we will permit the parties to state their positions on the compensation request

before a settlement of an intervenor's claim of compensation will be considered. In view of the line-by-line analysis that TURN's abbreviated filing enabled us to perform, we are satisfied that the number of hours claimed did result in TURN's substantial contribution to our decisions restructuring the provision of natural gas in California. That is, TURN's efforts resulted in our adoption in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by TURN.

IV. Itemization of Costs

Attached as Attachment A to TURN's Request for Compensation is the "Settlement Agreement Regarding Intervenor Compensation." This documents TURN's, PG&E's, SoCal's, and SDG&E's agreement and stipulation that TURN should be awarded compensation for its substantial contributions to the Commission's decisions in the gas industry restructuring proceedings in the amount of $245,373.92. This amount is "complete and total compensation for all work performed and expenses incurred by TURN in the restructuring cases during the period from March 19, 1986, through September 8, 1988."

The total amount of compensation was summarized in Attachment C to TURN's Request for Compensation. Attachment C is reproduced below:

Attachment C

SUMMARY OF HOURS AND EXPENSES

Attorney/Witness Fees:	Hours	x Rate	= Total
Pre-OII/OIR Comment Phase (3/19/86 - 4/14/86)	24.75	$175	$ 4,331.25
OIR Comment Phase (6/5/86 - 7/29/86)	31.25	$175	$ 5,468.75
OIR Settlement Phase (8/1/86 - 12/3/86)	46.50	$175	$ 8,137.50
OII Hearing Phase (6/20/86 - 12/3/86)	236.25	$175	$ 41,343.75
OII/OIR Modification Phase (12/10/86 - 5/31/87)	86.75	$185	$ 16,048.75
Implementation Phase (1/21/87 - 12/24/87):			
Sales Forecast Issues	70.33		
Transition Cost Issues	102.75		
Embedded Cost Studies	52.75		
Revenue Requirements	17.92		
Cost Allocation/Rate Design	70.42		
"Table 2" Issues	18.67		
Unallocable Common Time	414.00		
Subtotal	746.83	$185	$138,163.55
Final Compliance Phase (1/14/88 - 8/11/88)	94.33	$185	$ 17,451.05
Compensation-Related Hours:			
1986 (Eligibility)	3.00	$150	$ 450.00
1987-88	40.25	$160	$ 6,440.00
Other Reasonable Costs:			
Copying			$ 5,417.61
Postage			$ 1,636.46
Parking			$ 485.25
Grand Total			$245,373.92

TURN supplied workpapers in support of this summary. In these workpapers, the hours devoted to each proceeding were itemized by date and task.

I.86-06-005 and R.86-06-006

TURN seeks compensation for 24.75 hours during which it reviewed our preliminary gas restructuring order, prepared its own comments, and reviewed the comments of others. These hours appear reasonable in light of TURN's contribution to those decisions.

D.86-12-010

TURN itemized 79.75 hours for time spent in this proceeding. Since this decision adopted a new regulatory framework for the gas utilities following the receipt of comments ordered by R.86-06-006, it was reasonable for TURN to spend about 31 hours preparing comments and reviewing those of other parties, and the remainder of those hours in meetings with others preparing the stipulation that was ultimately adopted by the Commission.

D.86-12-009

Here, TURN expended 236.25 hours on this proceeding, which developed exemplary rates reflecting our new gas industry structure. TURN's workpapers reveal that much of its time was spent preparing testimony and participating in the hearings, which spanned three months, and in filing its briefs. Given TURN's contribution to this decision, we find the claimed hours to be reasonable.

D.87-02-029, D.87-03-044, and D.87-05-046

TURN claims compensation for 86.75 hours expended in the parties' challenges to our December 1986 decisions. The hours are itemized according to issue, e.g. demand ratchet, A&G, etc., and according to the pleading to which TURN responded. The relation between TURN's claimed hours and its contribution is well documented.

D.87-12-039

In this, the implementation phase of our gas industry proceeding, TURN claims it expended a total of 746.83 hours. Those hours are broken down by issue in Attachment C, reproduced above. TURN's workpapers detail its review of other parties' positions and extensive use of data requests, its preparation of testimony and cross examination of witnesses during the more than 30 days of hearings in this case, as well as its post-hearing tasks. The itemization of hours by issue and witness demonstrates they were expended to achieve the substantial contribution we described above.

D.88-03-041, D.88-03-085, Res. No. G-2787, Res. No. G-2796, and advice letters

TURN claims compensation for 94.33 hours expended during our review of challenges to D.87-12-039. The workpapers document hours spent on the core-elect issue, the preliminary statements of PG&E and SoCal, advice letter workpapers, the review of specific petitions and applications by other parties, and work on the trigger mechanism. These hours will be compensated.

We note that TURN expended a total of 1,266.66 hours on its advocacy of substantive issues and only 43.25 hours in the preparation of this fee request. Given the enormous scope of these proceedings, had the utilities chosen to challenge TURN's claimed contribution, the effort devoted to preparing this request, and the expense would have been greatly magnified. We appreciate the cooperation of all the parties in limiting ratepayer exposure to the expense of what could have been an unproductive exercise.

There is a clear and reasonable correlation between the hours claimed and the substantial contribution which TURN made to our decisions. We will compensate TURN for all of these hours.

V. Hourly Rate of Compensation

The Request seeks compensation at a basic hourly rate of $150 for work performed in 1986 and a basic hourly rate of $160 for work performed January 1, 1987 and thereafter. We had determined to compensate Florio at the rate of $150 per hour in 1985. The increase of $10 per hour was justified in the Request as being "well in line with the rate of escalation of attorney fees generally, and is considerably smaller than the 'enhancement' that TURN would have requested in the absence of a stipulation, due to its exceptionally outstanding performance in this case."

The hourly rate of $150 is reasonable for work performed in 1986. The proposal to increase the hourly rate is not justified by objective evidence. However, in this specific proceeding and on our own motion, we authorize an increase of $10 per hour commencing with work performed in 1987 in recognition of the value of Florio's experience in this area of public utility regulation. We found him to be effective in grasping our regulatory intent, identifying where the interests of residential ratepayers lie in this untried environment, and persuading this Commission to adopt ratemaking mechanisms that are at once consistent with our aim of recognizing market forces and protective of "captive ratepayers." His advocacy during 1987 and 1988 demonstrated a skill level that would be recognized in the attorney marketplace with compensation at the rate of $160 per hour. For the future, however, we will expect to see any increases in hourly rates fully supported. An uncontested settlement gives us no basis for finding an increased rate reasonable.

This basic rate applies to hours spent preparing the Request. TURN's workpapers are consistent with this rule.

TURN has requested enhancement of the basic rate by $25 in recognition of the dual role performed by Florio as an advocate and as an expert witness. This is supported by the itemization of

tasks in TURN's workpapers as well as consistent with numerous Commission compensation awards to TURN and will be granted.

VI. The Compensation Award

In addition to hourly compensation, TURN requested reimbursement for reproduction expense of $5,417.61 and postage expense of $1,636.46. Separate postage and reproduction costs were maintained and listed for each document (indicated by date of filing) in TURN's workpapers. The claimed parking expense of $485.25 was itemized by months of hearings. These expenses are reasonable and will be granted.

Consistent with the preceding discussion, TURN's total compensation award in connection with the Commission's gas industry restructuring, from March 19, 1986 through September 8, 1988, is $245,373.92.

The parties to the stipulation have also apportioned payment of the compensation according to these percentages:

PG&E	46.55%
SoCal	44.95
SDG&E	8.50

No basis for these percentages was provided. However, allocation under these factors would provide TURN with recovery of 100% of any compensation which we order and would not unfairly burden the customers of any one of the utilities. It appears, moreover, that the apportioned amounts, $114,221.56, $110,295.58, and $20,856.78, would not constitute unreasonable expenses for ratemaking purposes. The allocation is reasonable and will be adopted.

Findings of Fact

1. TURN has requested compensation totaling $245,373.92 in connection with its participation in I.86-06-005, R.86-06-006, A.87-01-033, A.87-01-037, and A.87-04-044.

2. TURN filed its request for a Commission finding of eligibility to claim intervenor compensation in R.86-06-006 within 30 days of the close of the evidentiary record. The request referred to issues already raised in the proceeding, estimated that about 100 hours of attorney time would be devoted to the case, and estimated a budget of up to $16,000.

3. TURN filed its request for a Commission finding of eligibility to claim intervenor compensation in I.86-06-005 within 30 days of the close of evidentiary record. The request referred to issues that TURN had already presented to the Commission, estimated that about 250 hours of attorney time would be expended on this case, and estimated a budget of up to $47,000.

4. TURN filed its request for a Commission finding of eligibility to claim intervenor compensation in A.87-01-033, A.87-01-037, and A.87-04-044 within 30 days of the close of the evidentiary record. It identified transition costs, sales forecasts, balancing account allocation, and the allocation of balancing account costs as issues that it would address, estimated 700 hours of attorney time and a budget of up to $135,000 for its participation.

5. TURN's workpapers document the fact that it performed its work on the gas industry restructuring proceeding during 1986, 1987, and 1988.

6. The Commission found that participation in the Commission's proceedings during 1986 would cause TURN to suffer financial hardship in D.86-02-039.

7. The Commission held that participation in the Commission's proceedings during 1987 would cause TURN to incur financial hardship in D.87-04-032.

8. The Commission determined that participation in the Commission's proceedings during 1988 would cause TURN to undergo financial hardship in D.88-07-035.

9. The 24.75 hours TURN expended on I.86-06-005 and R.86-06-006 substantially contributed to the Commission's adoption of mechanisms to protect captive ratepayers.

10. The 79.75 hours spent by TURN in R.86-06-006 substantially contributed to the Commission's assignment of fixed costs on a broad basis in our decision in this rulemaking proceeding, D.86-12-010.

11. The 236.25 hours devoted by TURN in I.86-06-005 substantially contributed to our development of rates which encouraged the utilities to be market-responsive, to compete with other suppliers of fossil fuels, but minimized the risk to captive ratepayers in our decision in this investigation, D.86-12-009.

12. TURN's use of 86.75 hours to review and respond to challenges to the December 1986 decisions substantially contributed to the reinforcement of those earlier decisions in D.87-02-029, D.87-03-044, and D.87-05-046.

13. The 746.83 hours spent by TURN in A.87-01-033, A.87-01-037, and A.87-04-040 resulted in TURN's substantial contribution to our decision in the implementation phase of the gas industry restructuring proceeding, D.87-12-039.

14. The 94.33 hours claimed by TURN in its review of challenges to D.87-12-039 and its review of the utilities' implementation filings resulted in TURN's substantial contribution on core procurement issues and the tariff terms under which the utilities' unbundled gas services are offered.

15. TURN should be compensated for all 1,309.91 hours which it expended on the gas industry restructuring case between March 19, 1986 and September 8, 1988.

16. The reasonable compensation to TURN for the services of its attorney, Michel Florio, for work performed as an attorney is $150 per hour in 1986 and $160 per hour in 1987 and 1988.

17. Florio's hourly rate should be increased by $25 in recognition of his participation as an expert witness as well as

attorney for all hours except for the 43.25 hours spent preparing the instant fee request.

18. TURN's reproduction expense of $5,417.61, postage expense of $1,636.46, and parking expense of $485.25 are reasonable and TURN should be reimbursed for those costs.

Conclusions of Law

1. TURN is eligible to receive intervenor compensation in I.86-06-005, R.86-06-006, A.87-01-033, A.87-01-037, and A.87-04-044.

2. Good cause has not been shown for shortening the time for reply to an intervenor's request for compensation from the 30 days provided in Rule 76.56 to 10 days as requested by TURN.

3. In lieu of considering whether the settlement is in the public interest and should be adopted, we have analyzed in great detail TURN's participation in the underlying decisions and the workpapers TURN has provided in support of its Request for Compensation. On the basis of this analysis we find that TURN has made a substantial contribution to the policies, procedures, legal conclusions, and factual findings adopted by this Commission in I.86-06-005, R.86-06-006, D.86-12-009, D.86-12-010, D.87-02-029, D.87-03-044, D.87-05-046, D.87-12-039, D.88-03-041, D.88-03-085, Resolution No. G-2787, and Resolution No. G-2796. TURN should be compensated in the amount of $245,373.92 for its substantial contribution to the foregoing Commission actions.

4. PG&E should be ordered to pay TURN 46.55% of its compensation award, or $114,221.56.

5. SoCal should be ordered to pay TURN 44.95% of the compensation awarded TURN, or $110,295.58.

6. SDG&E should be ordered to pay TURN 8.5% of the compensation award to TURN, or $20,856.78.

O R D E R

IT IS ORDERED that:

1. TURN's "Request for Compensation and Motion to Modify the Procedure for Reply" is granted, except for the Motion to Modify the Procedure for Reply, which is denied.

2. PG&E shall pay TURN $114,221.56 within 10 days from today, as its reasonable share of compensation for TURN's substantial contribution to our gas industry restructuring decisions (i.e., I.86-06-005, R.86-06-006, D.86-12-009, D.86-12-010, D.87-02-029, D.87-03-044, D.87-05-046, D.87-12-039, D.88-03-041, D.88-03-085, Resolution No. G-2787, Resolution No. G-2796, and PG&E's and SoCal's implementing advice letters).

3. SoCal shall pay TURN $110,295.58 within 10 days from today, as its reasonable share of compensation for TURN's substantial contribution to our gas industry restructuring decisions.

4. SDG&E shall pay TURN $20,856.78 within 10 days from today, as its reasonable share of compensation for TURN's substantial contribution to our gas industry restructuring decisions.

This order is effective today.

Dated MAR 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

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

Victor Weisser

Victor Weisser, Executive Director

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's motion into implementing a rate design for unbundled gas utility services consistent with policies adopted in Decision 86-03-057.	I.86-06-005 (Filed June 5, 1986)
	R.86-06-006 (Filed June 5, 1986)
	Application 87-01-033 (Filed January 20, 1987)
And Related Matters.	Application 87-01-037 (Filed January 27, 1987)
	Application 87-04-040 (Filed April 20, 1987)

O P I N I O N

I. Summary

By this decision we find Toward Utility Rate Normalization (TURN) eligible to receive compensation as an intervenor in the series of proceedings which have resulted in our restructuring the way in which investor-owned natural gas utilities provide gas in California. We also grant TURN's request for compensation; we adopt the stipulation between TURN, Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal), and San Diego Gas & Electric Company (SDG&E) providing TURN compensation totaling $245,373.92 for its substantial contribution to our decisions. The allocation factors contained in the stipulation result in payment by PG&E of $114,221.56, payment by SoCal of $110,295.58, and payment by SDG&E of $20,856.78. We

we must rely on TURN's representations in its request for compensation. PG&E and SoCal concur with TURN, as evidenced by the stipulation between these parties. We will accept TURN's claim.

Conclusion

In its Request for Compensation, TURN states that its filing is considerably shorter than it otherwise would have been because a stipulation has already been reached with the primary interested parties. TURN submitted only summaries of its contributions and costs in place of the usual detailed discussion of substantial contributions and exhaustive itemization of time and expenses. TURN claimed that the time savings permitted by this approach were a substantial inducement for TURN to enter into a stipulated agreement.

We agree that, generally, ratepayers are served by a minimization of advocate's time used to prepare requests for compensation. However, ratepayers also need assurance that a factual basis exists for the award of compensation. A settlement, in the absence of the parties' testimony on the issues in controversy, provides no basis for a finding that the settlement is in the public interest. No responses to the compensation filing or statements of position setting forth the controversy which became the subject of the settlement were provided in this case. Since TURN did not undertake a detailed exposition of its contribution, and other parties did not launch their customary criticism of the intervenor's claims, we closely examined the relevant decisions to ascertain the extent of TURN's contributions.

While the ratepayers may have saved money from not having to compensate the utilities and the intervenor for contesting the merits of the compensation claim, they are not well served by the commitment of this Commission's resources to develop all the sides of the merits of TURN's request. In the future, we will require the parties to state their positions on the compensation request

I. 86-06-005
R. 86-06-006
A.87-01-033
A.87-01-037
A.87-04-040

D. 89-03-018

DECISION NO._____ CASE NO._____ APP. NO._____

ORIGINAL

Decision 89 03 019 MAR 8 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Salinas Cellular Telephone Company for a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code of the State of California for authority to construct and operate a new domestic public cellular radiotelecommunication service to the public in the Salinas-Seaside-Monterey Cellular Geographic Service Area in California and for authority under Sections 816 through 830 and 851 of the Public Utilities Code to issue evidence of indebtedness in the principal amount of up to $4,500,000 to encumber public utility property. (U-3018-C)	Application 88-02-035 (Filed February 19, 1988)

Graham & James, by David J. Marchant and Rachelle B. Chong, Attorneys at Law, for Salinas Cellular Telephone Company, applicant.
Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc., protestant.

FINAL OPINION

Background

On February 19, 1988, Salinas Cellular Telephone Company (applicant), a California general partnership, filed an application seeking a certificate of public convenience and necessity (CPC&N) to construct and operate a new domestic public cellular radio telephone service within the Salinas, Seaside, and Monterey Metropolitan Statistical Area (MSA). Subsequently, on June 1, 1988, applicant filed an amendment to reflect changes in its

general partnership's majority interest, use of facilities, financial plans, and management.

A protest to the application and to the amendment was filed by Cellular Resellers Association, Inc. (CRA) on March 22, 1988, and June 10, 1988, respectively. CRA's protest asserts that applicant is not financially qualified to construct or operate the proposed system, and that applicant does not justify its proposed rates.

Interim Decision (D.) 88-07-064 granted applicant a CPC&N to construct the necessary facilities for its proposed public cellular radio telephone communication service. The interim decision also addressed applicant's environmental report, ownership change, proposed facilities, financial plans, and management. However, it did not grant any authority to operate until applicant's proposed rates and service are addressed.

A prehearing conference (PHC) was held on August 15, 1988. At the PHC, applicant and CRA agreed to an October 24, 1988 evidentiary hearing to address the reasonableness of applicant's rates, terms, and conditions of service. At applicant's request, the evidentiary hearing was postponed to December 5, 1988 and subsequently taken off calendar pending discussions between applicant and CRA.

The discussions, which extended over a five-month period, resulted in an uncontested settlement agreement (agreement) between applicant and CRA. This agreement was filed as a part of applicant's January 5, 1989 motion to adopt the agreement, request to waive the Commission's settlement rule, and request for authority to operate. Concurrent with this filing, CRA filed a request to withdraw its protest conditioned upon approval of the agreement, in its entirety. Subsequently, on March 1, 1989 an amendment to the agreement was filed jointly by applicant and CRA.

Settlement Agreement

A copy of the agreement and amendment is attached hereto as Appendixes A and B, respectively.

The agreement, as amended, provides for applicant to offer resellers:

a. Special roaming rates and charges to those resellers not controlled or owned by a facilities-based carrier or an affiliate of a facilities-based carrier;

b. Billing credits to applicant's resellers when a reseller's customer roams on any of the McCaw Systems;

c. Volume sensitive wholesale rates based on an aggregation of the reseller's monthly local usage volume with monthly local usage volumes on the facilities of Block A cellular operators in the San Francisco, San Jose MSA, Napa, Fairfield, Vallejo MSA, Santa Rosa MSA, and Santa Cruz MSA. Applicant will obtain such volume aggregation from a central billing source based on tapes from Bay Area Cellular Telephone Company's switching office, used by the four Block A cellular carriers;

d. Blocks of numbers with the required initial order to be no more than 25 numbers;

e. A charge for wholesale access fees only when the number is activated within 60 days of order. The reseller is required to start paying access fees for those numbers not activated after 60 days of order;

f. Direct computer access for number activation and deactivation, provided that the costs of a computer terminal and modem on a reseller's premise and a business telephone line is borne by the reseller and that a dial-up modem port and software necessary to accommodate direct number activation and deactivation by a reseller is furnished by applicant; and

g. Wholesale tariffs, applicable to certificated resellers only.

Under the agreement, applicant and CRA "have also agreed to stipulate as to the outcome of the Commission's final Decision in Cellular Reseller's Association Inc. v. GTE Mobilnet C.86-12-023..." (Appendix A, p. 9.) The term of the agreement is for a one-year period and may be terminated by either party upon written notice after the other party breaches the agreement if such breach is not cured within 30 days.

Discussion

The agreement is the result of a compromise of disputed claims between applicant and CRA. Although the term of the agreement is limited to one year, applicant's proposed tariffs will remain in effect and will not change until such time as applicant files an advice letter to amend its tariffs, pursuant to Public Utilities Code § 491 and General Order 96-A. If either party breaches the agreement prior to the termination date of the agreement, such breach will not have any effect upon applicant's authorized tariffs.

Further, applicant and CRA do not oppose the extension of the agreement to certificated resellers not a member of CRA.

The agreement, as amended, is in the public interest because it will enhance the cellular reseller market in the Salinas, Seaside, and Monterey MSA and provide end users within the MSA a choice of competitive cellular service from two facilities based carriers and numerous resellers. Therefore, we will adopt the agreement.

The only issue remaining is whether applicant's proposed rates, which are similar to the cellular rates applicable to the San Francisco and San Jose market, are reasonable. These rates, as attached to the agreement, are as follows:

	Wholesale	Retail
Basic Service		
Number Activated	$15.00	
Service Established		$25.00
Change Charge	15.00	25.00
Service Restoral Charge		25.00
Basic Plan		
Access Charge		
Up to 100 numbers	30.50	
Each number in excess of 100 numbers	28.25	
Each Number		45.00
Peak usage	0.38	0.45
Peak usage over 30,000 min.	0.36	
Off-peak usage	0.16	0.20
Personal Communications Plan		
Access Charge	17.00	25.00
Peak usage	0.72	0.90

Subsequent to the setting of an evidentiary hearing on this application, an investigation into the regulation of cellular utilities (Investigation (I.) 88-11-040) was issued. The investigation was opened to determine whether the initial cellular framework established in early CPC&N proceedings is meeting our objectives. The method of setting cellular rates is an integral part of the investigation. Pending a change in setting cellular rates, applicant and other cellular utilities are required to demonstrate the reasonableness of the rates they propose to offer.

Applicant's financial data and projections included the application and amended application show that, although it will operate at a loss the first two years of operation, it expects to show a profit in its third year of operation. Applicant's proposed rates are reasonable. Applicant should be granted authority to operate its cellular system as provided in its filed agreement.

Applicant requests a waiver of Rule 51.1(b) which requires the settling parties to convene at least one conference

with notice to all parties so that each party may participate in a meeting to discuss the settlement prior to signing. Although the agreement was mailed to 62 cellular entities and persons on January 5, 1989, a waiver of Rule 51.1(b) is not necessary because only applicant and CRA are parties of record. No inquiry or protest to the agreement was received. Applicant and CRA are in compliance with Rule 51. This proceeding is closed.

Findings of Fact

1. CRA's protest asserts that applicant does not justify its proposed rates.

2. Interim D.88-07-064 granted applicant a CPC&N to construct its proposed cellular facilities.

3. Applicant and CRA agreed to an evidentiary hearing to address the reasonableness of applicant's rates, terms, and conditions of service.

4. Applicant and CRA filed a stipulated agreement on January 5, 1989.

5. CRA filed a motion to withdraw its protest conditioned upon approval of the agreement, in its entirety.

6. An amendment to the agreement was filed on March 1, 1989.

7. The basic rates and charges identified in applicant's initial application are the same as the rates and charges attached to the agreement.

8. I.88-11-040 was issued to investigate the regulation of cellular utilities and the method of setting cellular rates.

9. Applicant and other cellular utilities are required to demonstrate the reasonableness of the rates they propose to offer.

10. Applicant has demonstrated in its application and amended application that its proposed service will show a profit in applicant's third year of operation.

11. Applicant and CRA are in compliance with Rule 51.

12. Only applicant and CRA are parties of record.

Conclusions of Law

1. The agreement as modified by applicant's and CRA's joint amendment should be adopted.

2. Applicant's rates attached to the agreement and as modified by the amendment to the agreement are reasonable and should be adopted.

3. There being no issues remaining to be considered, this proceeding should be closed.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPC&N) is granted to Salinas Cellular Telephone Company (applicant) to operate a cellular mobile telecommunications system in the Salinas, Seaside, and Monterey Metropolitan Statistical Area.

2. The provisions of the stipulated agreement attached as Appendix A and as modified by Appendix B shall be adopted.

3. California Resellers Association's (CRA) protest is dismissed.

4. Applicant and CRA are in compliance with Rule 51 of the Commission's Rules of Practice and Procedure.

5. Within 30 days after this order is effective applicant shall file a written acceptance of the CPC&N with the Commission Advisory and Compliance Division (CACD) Director.

6. Applicant shall keep its books as directed by the Uniform System of Accounts for cellular communications licenses as prescribed by Decision (D.) 86-01-043.

7. Applicant shall notify CACD Director in writing of the day it starts operating.

8. On or after the effective date of this order, applicant is authorized to file wholesale and retail tariff schedules in accordance with the rates identified in this order, as attached to

applicant's January 5, 1989 and as modified by the March 1, 1989 amendments to the stipulated agreement. The filing shall comply with General Order Series 96 and shall be effective not earlier than 5 days after filing.

9. Within 60 days after the effective date of this order, applicant shall prepare and issue to each employee who, in the course of employment, enters a customers or subscribers premise, an identification card in a distinctive format having a photograph of the employee. Applicant shall require each employee to present the identification card when requesting entry into any building or structure of a customer or subscriber, pursuant to PU Code $ 708.

10. Applicant's filed tariffs shall provide for a user fee surcharge of 0.10%, pursuant to PU Code $$ 431-435.

11. Applicant is subject to a one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf, pursuant to PU Code $ 2881 as set forth in Resolution T-13005.

12. The corporate identification number assigned to Salinas Cellular Telephone Company is U-3018-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. The authority granted in this order will expire if not exercised within 12 months after the effective date of this order.

14. This proceeding is closed.

This order is effective today.

Dated MAR 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

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

Victor Weisser, Executive Director

APPENDIX A

II.

SUMMARY OF THE PROPOSED SETTLEMENT
AS IT APPLIES TO SALINAS CELLULAR

Under the Settlement Agreement, CRA has agreed to withdraw its protest to Salinas Cellular's Application and to refrain from filing any further protests to the Application so long as Salinas Cellular complies with the terms of the Settlement Agreement and the Application continues to contain terms and conditions as favorable to the CRA as those contained in the tariffs presently proposed by Salinas Cellular, as amended by the terms of the Settlement Agreement.

Salinas Cellular has agreed to amend its draft tariffs prior to commencing service in the Salinas CGSA to provide the following:

A. Roaming Rates.

(1) Special roaming rates and roaming charge reimbursements will be available to any reseller that is not controlled or owned by a facilities-based carrier or an affiliate

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1/ The Settlement Agreement also covers matters unrelated to this proceeding, thus only the portions relevant to Salinas Cellular are summarized.

of a facilities-based carrier ("Independent Reseller") when either:

(a) The Independent Reseller provides service to a customer on the facilities of certain McCaw-owned or McCaw-controlled cellular systems in California (the "McCaw Systems") (the facility providing service to the Independent Reseller will be referred to as the "Home System"); or

(b) The Independent Reseller's customer roams on the facilities of the McCaw Systems (such carrier will be referred to as the "Serving System").

(2) When an Independent Reseller's customer roams on any of the McCaw Systems, the Independent Reseller shall be entitled to a credit upon billing. The Independent Reseller shall pay for roaming in accordance with the rates set forth in the Serving System's roamer tariffs applicable to the Home System's customers, less a credit equal to a sum calculated according to the following formula:

(a) The product of the amount paid by the Independent Reseller for roaming usage charges under the Serving System's tariff by a percentage equal to the difference between the Serving System's retail and wholesale usage rates, expressed as a percentage of the retail usage rate; and

(b) The product of the amount to be paid by the Independent Reseller for any roaming access charges

under the Serving System's tariff multiplied by the percentage equal to the difference between the Serving System's retail and wholesale access charges, expressed as a percentage of the retail access charge.

B. Volume Aggregation.

For the purpose of qualifying for volume-sensitive wholesale rates, Independent Resellers will be permitted under the wholesale tariffs of Salinas Cellular to aggregate their monthly local usage volumes on the facilities of such entities with monthly local usage volumes on the facilities of the Block A cellular operators in the following CGSAs: San Francisco-San Jose, Napa-Fairfield-Vallejo, Santa Rosa and Santa Cruz.

C. Access Fee.

With respect to any numbers allocated to an Independent Reseller, Salinas Cellular's tariffs will provide that the wholesale access fee shall be paid at the time of activation and not at the time of the allocations of such numbers. The Independent Resellers have agreed not to maintain unreasonably high inactive inventories which would limit the furnishing of numbers by Salinas Cellular to other customers. A reseller's failure to activate all of the numbers in its minimum initial order of numbers within sixty (60) days or more after their allocation, shall be conclusively deemed to be the retention of an unreasonably high inventory and shall result in all access fees for such

numbers being due at the next billing cycle applicable to such reseller. Salinas Cellular agrees to file tariffs providing that the initial order of numbers shall be no more than 25.

D. Direct Computer Access.

Salinas Cellular has agreed to allow resellers direct computer access for number activation and deactivation, provided that the costs of a computer terminal and modem on a reseller's premises and a business telephone line will be borne by such reseller and that a dial-up modem port and software necessary to accommodate direct number activation and deactivation by a reseller will be furnished by Salinas Cellular. If in the future, Salinas Cellular is unable to accommodate resellers' requests for direct computer access due to a lack of ports or a need to revise software, Salinas Cellular would have the right to allocate expenditures necessary to accommodate such requests among its retail operations and all resellers requesting to use direct computer access on Salinas Cellular's system.

E. Applicability of Wholesale Tariff.

Salinas Cellular's wholesale tariffs will be applicable only to certificated resellers, subject to the following exception. If Salinas Cellular identifies any potential customer in its service territory that would purchase a large enough quantity of cellular numbers to qualify for wholesale rates under the tariff of the Block B facilities-based carrier in that service territory, Salinas Cellular may,

APPENDIX A

following reasonable advance notice to CRA, amend its wholesale tariffs in order to provide wholesale service to that customer or other similarly situated customers. CRA has agreed not to oppose such amendment.

Salinas and CRA have also agreed to stipulate as to the outcome of the Commission's final Decision in Cellular Reseller's Association, Inc. v. GTE Mobilnet, C.86-12-023, and Salinas Cellular has agreed to adhere to the accounting requirements relating to the Uniform System of Accounts for Cellular Carriers, including the segregation of wholesale and retail revenues and expenses.

The term of the Settlement Agreement is one (1) year from the date that tariffs required under the Agreement are filed. The Agreement may be terminated by either party upon written notice after the other party breaches the Agreement and such breach is not cured prior to the end of the thirty (30) day period.

The parties agree to file a motion of waiver of Rule 51 of the Commission's Rules of Practice and Procedure, pursuant to Rule 51.10. The parties have agreed to cooperate in obtaining such a waiver in good faith.

The parties have agreed that no partnership, agency or franchise agreement is created by the Agreement and no other person or entity besides the parties shall acquire any rights hereby or hereunder.

All notices required by the Agreement are to be sent to the parties' addresses set out in an attachment to the Agreement.

APPENDIX A

The Agreement is to be governed by and construed in accordance with the laws of California and any action brought for breach of the Agreement shall be brought before a court or agency of competent jurisdiction within the State of California.

The Agreement is subject to such changes as either the Federal Communications Commission or the California Commission may direct in its exercise of jurisdiction. Should there be any conflict between the provisions of the Agreement and any regulatory action affecting the subject matter of the Agreement, the Parties have agreed to amend the Agreement to conform to such regulatory action.

The Agreement is intended as a compromise of disputed claims and shall not be deemed an admission by any party that the other party is entitled to the relief provided under the Agreement as a matter of law or regulatory policy.

CRA has warranted that it has the authority to enter into a binding Agreement with Salinas Cellular on behalf of each of its members. CRA has agreed to furnish a copy of the Agreement to each of its present members and to require each new member during the term of the Agreement to agree in writing to be bound by its terms.

The Agreement is binding upon the parties, their members, and the partners, shareholders, officers, successors or assigns and subsidiaries and affiliates of such parties and their members.

The parties have agreed to file such motions, stipulations, agreements or other pleadings with the Commission

APPENDIX A

as are necessary and appropriate to effect the withdrawal of Protests by the CRA to the Salinas Cellular Application.

The Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

Any reseller that seeks to benefit from the provisions of the Agreement must become an individual signatory of the Agreement.

(END OF APPENDIX A)

APPENDIX B

The purpose of this Joint Motion is to clarify the following matters in the Motion:

Roaming Rates. On pages 5-7 of the Motion, a special roaming rate and roaming charge reimbursements are set forth. The parties wish to clarify that the credit referred to on page 6 of the Motion in paragraph 2 is available, in the context of this proceeding, only to Salinas Cellular's resellers. Thus, the only utilities' tariffs affected by the Settlement Agreement in the context of this proceeding will be Salinas Cellular's tariffs.

Volume Aggregation. On page 7 of the Motion, Section B states that for the purpose of qualifying for volume-sensitive wholesale rates, resellers will be permitted under the wholesale tariffs of Salinas Cellular to aggregate

their monthly local usage volumes on the cellular systems of the Block A carriers in the following CGSAs: San Francisco/San Jose, Napa-Fairfield-Vallejo, Santa Rosa-Petaluma and Santa Cruz. The parties wish to clarify that such information regarding volume aggregation by the resellers will be readily available to Salinas Cellular from a central billing source based on tapes from the Mobile Telephone Switching Office ("Switch") operated by Bay Area Cellular Telephone Company, which is the switch that is shared by the four Block A cellular carriers.

Term of the Settlement Agreement. On page 9, second full paragraph of the Motion, the term of the Settlement Agreement is set forth as being one year from the date that tariffs required under the Agreement are filed. The Motion also states that the Agreement may be terminated by either party upon written notice after the other party breaches the Agreement and such breach is not cured prior to the end of the thirty (30) day period. As consideration for the concessions made by Salinas Cellular, CRA has agreed to withdraw its protest to Salinas Cellular's Application and to refrain from filing any further protests to the Application so long as Salinas Cellular complies with the terms of the Agreement, which includes Salinas Cellular's filing and maintaining tariffs containing the provisions described on pages 5-9 of the Motion. Although the term of the Agreement is limited to

one year, such tariffs filed with the Commission shall remain in effect indefinitely and will not change until such time as Salinas Cellular files an advice letter to amend the tariffs, pursuant to Section 491 of the Public Utilities ("PU") Code and General Order No. 96-A. Should one party to the Agreement breach the Agreement prior to the expiration of its term or should the Agreement terminate upon its expiration, such breach or expiration of the Agreement would not by itself have any effect upon Salinas Cellular's effective tariffs absent an advice letter filing. Once the Agreement is terminated due to either breach or expiration of the one year term, Salinas Cellular may file an advice letter to change its tariffs and CRA would be free to protest such advice letter filing since both parties will no longer be restrained by the Agreement.

Applicability of Wholesale Tariff. On page 8, paragraph E of the Motion, the parties wish to clarify that, in the event Salinas Cellular identifies a potential bulk user in its CGSA and files an advice letter to amend its wholesale tariff in order to provide service to bulk users, the "reasonable advance notice" that will be given to CRA will be the 40 days' notice afforded under General Order No. 96-A. Such advice letter will be served upon CRA members pursuant to General Order No. 96-A.

Benefits to Resellers. The parties understand that the Commission intends to order that any benefit obtained by

APPENDIX B

independent resellers who are members of CRA under the Agreement be extended to all certificated resellers. The parties will comply with such a Commission order.

(END OF APPENDIX B)

Conclusions of Law

1. The agreement as modified by applicant's and CRA's joint amendment should be adopted.

2. Applicant's rates attached to the agreement and as modified by the amendment to the agreement are reasonable and should be adopted.

3. There being no issues remaining to be considered, this proceeding should be closed.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPC&N) is granted to Salinas Cellular Telephone Company (applicant) to operate a cellular mobile telecommunications system in the Salinas, Seaside, and Monterey Metropolitan Statistical Area.

2. The provisions of the stipulated agreement attached as Appendix A and as modified by Appendix B shall be adopted.

3. California Resellers Association's (CRA) protest is dismissed.

4. Applicant and CRA are in compliance with Rule 51 of the Commission's Rules of Practice and Procedure.

5. Within 30 days after this order effective applicant shall file a written acceptance of the CPC&N with the Commission Advisory and Compliance Division (CACD) Director.

6. Applicant shall keep its books as directed by the Uniform System of Accounts for cellular communications licenses as prescribed by Decision (D.) 86-01-043.

7. Applicant shall notify CACD Director in writing of the day it starts operating.

8. On or after the effective date of this order, applicant is authorized to file wholesale and retail tariff schedules in accordance with the rates identified in this order, as attached to