

FEB 20 1997

Decision 97-02-048 February 19, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SOUTHERN CALIFORNIA EDISON COMPANY )	
(U 338-E) Authority to Increase Its)	
Authorized Level of Base Rate )	
Revenue Under The Electric Revenue )	Application 93-12-025
Adjustment Mechanism For Service )	(Filed December 27, 1993)
Rendered Beginning January 1, 1995 )	
And To Reflect This Increase In )	
Rates. )	
_____ )	
Order Instituting Investigation )	
Into The Rates, Charges, And )	
Practices Of SOUTHERN CALIFORNIA )	I.94-02-002
EDISON COMPANY Establishment Of )	(Filed February 4, 1994)
The Utility's Revenue Requirement, )	
And Attrition Request. )	
_____ )	

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$71,254.71 in compensation for its contribution to the Decision (D.) 96-08-025, in Phase 2B of Southern California Edison Company's (Edison) general rate case (GRC).<sup>1</sup>

<sup>1</sup> Subsequent to its request for an award of compensation, TURN changed its name from Toward Utility Rate Normalization to The Utility Reform Network.

### 1. Background

During the ratemaking phase (Phase 2) of Edison's GRC, Edison proposed a set of flexible pricing options which would offer discounts and other rate incentives to selected business customers in the form of preapproved tariffs. Edison recommended separating the Commission's consideration of these pricing options, along with associated ratemaking treatment, from the other issues in Phase 2. Accordingly, these issues were delegated to Phase 2B, and were addressed by D.96-08-025. TURN participated in prehearing workshops and 11 days of evidentiary hearings in this phase. TURN submitted testimony, briefs and comments on the Administrative Law Judge (ALJ) proposed and alternate decision.

TURN filed its request for an award of compensation on October 7, 1996. There were no responses or protests to TURN's request.

### 2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(e)

in one phase of a proceeding remains eligible in later phases of the same proceeding.

TURN filed its Request For An Award Of Compensation on October 7, 1996 which satisfies the requirements of Section 1804<sup>o</sup> that such requests be filed within 60 days following the issuance (mailing) of a final decision. Although this proceeding remains open to address other issues, D.96-04-050 is a final order resolving flexible pricing and associated ratemaking issues for which compensation is sought by TURN

In view of the above, we find that TURN's request for compensation satisfies the eligibility and filing time requirements.

#### 4. Contributions to Resolution of Issues

In any proceeding involving multiple intervenors, we must consider (1) if the intervenor has made a substantial contribution to the decision of the Commission, satisfying the requirements of 1802, and (2) to what extent, if any, such contribution duplicated that of any other intervenor.

TURN submits that its activities in this phase constitute a substantial contribution warranting full compensation, even though TURN only received partial success on the issues it addressed. We agree. TURN's participation in Phase 2B clearly had a significant impact on our decision to modify the allocation of risks and rewards associated with Edison's flexible pricing proposal. Although our final decision did not adopt TURN's preferred ratemaking treatment,

we reiterated many of the points made by TURN in its testimony and briefs in reaching our conclusions and adopted treatment. For example, in describing our adopted ratemaking, we noted that the flexible pricing options would provide Edison with strategic tools, a point emphasized by TURN in its filings. Material presented by TURN during evidentiary hearings aided our assessment that there were benefits to Edison's shareholders from offering discounts under existing ratemaking practices. (D.96-8-025, pp. 39-40.)

Our discussion of the potential gaming and free rider problems associated with Edison's proposal also echoed points made by TURN in its testimony, briefs and during cross-examination. As a result of these considerations, we modified Edison's proposal to require a more equitable allocation of benefits and costs to ratepayers. Specifically, we required that ratepayers obtain 50% of net increased sales revenue as compared to the 0% allocation proposed by Edison. In addition, we clarified our definition of net costs and revenues in response to TURN's comments on the alternate decision.

We also note that the ALJ's proposed decision adopted a ratemaking treatment that was virtually identical to the one proposed by TURN. Our final decision did not alter the ALJ's articulation of the benefits and burdens, to which TURN's participation significantly contributed, but concluded

requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. Section 1802(h) states that "[s]ubstantial contribution' means that:

in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### 3. Timeliness and Eligibility

TURN was found eligible for compensation in an earlier phase of this proceeding by an ALJ's Ruling dated March 15, 1994. Under Rule 76.76, a customer found eligible

that a different balance was fairer. As we have confirmed in the past:

"In cases where the Commission does not wholly adopt the customer's position, contribution to an ALJ's proposed decision reinforces a substantial contribution to an order or decision." (D.95-05-05-003, mimeo. p.6; D.92-08-030, mimeo. p. 4; D.96-08-023, mimeo. p. 4.)

For the above reasons, we find that TURN has made a substantial contribution to D.96-08-025 and has satisfied the requirements of 1802.

Section 1801.3(f) requires that intervenor compensation be "administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding." At the same time, the intervenor compensation statutes (1802.5) allow the Commission to award full compensation, even where a party's participation has overlapped in part with the showing made by other parties, as long as that participation "materially supplements, complements, or contributes to the presentation of another party."

We have reviewed the record in this phase, and conclude that TURN's participation contributed points of fact, law, and policy that were not raised or addressed by other

parties, including the Office of Ratepayer Advocates (ORA), formerly the Division of Ratepayer Advocates. On those issues where some overlap existed, we find that TURN materially supplemented and complemented the presentation of ORA. This is borne out most clearly by the briefs submitted by TURN and ORA. While advocating very similar end results, the two parties came at a number of points in very different, and we believe complementary, ways. We conclude that TURN should be awarded full compensation for its participation in Phase 2B.

**5. The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$71,262.21 as follows:

Attorney Fees

Robert Finkelstein (TURN)

20.0	hours	x	\$210	=	\$ 4,200.00
237.75	hours	x	\$220	=	52,305.00

Michel Peter Florio (TURN)

49.25	hours	x	\$260	=	\$ 12,805.00
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Theresa Mueller (TURN)

1.5	hours	x	\$185	=	\$ 277.50
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Subtotal	=	\$ 69,587.50
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activity. TURN allocated most of the hours into two issue areas: 1) the broad policy issues regarding whether the flexible pricing proposal should be authorized and, if so, under what ratemaking terms; and 2) the specific flexible pricing options themselves (e.g., demand aggregation, environmental pricing credit).

In addition, TURN allocated hours spent on work fundamental to active participation in a Commission proceeding, such as reviewing hearing transcripts, other parties' filings and the proposed decision, into an unallocable category. This category was broken down further into: 1) general preparation time not allocable by issue, but which may vary in magnitude depending upon the total number of issues in the case and 2) work fundamental to active participation in the case that does not vary significantly in relation to the number of issues (e.g., attendance at prehearing conferences and workshops). TURN separately identified hours attending hearings where multiple topics were covered. Finally, TURN identified all hours associated with preparation of the intervenor compensation request.

We find that TURN has complied with the Commission's guidelines on allocation and documentation of hours claimed. We note that the issue of flexible pricing was one of the most controversial in the ratemaking phase of Edison's GRC. Hearings on Edison's flexible pricing proposal approached one-half of the total hearing days required for Phase 2A marginal

costs, revenue allocation and rate design issues. Moreover, the tariff, contract and narrative descriptions of Edison's pricing options and associated ratemaking treatment were detailed and voluminous. Edison's proposal also raised broad policy issues that required a thorough understanding of risks and rewards under current ratemaking treatment, as well as the potential changes in that balance in a restructured electric industry. We have reviewed TURN's claim for hours in this phase, and find them to be reasonable in light of the issues they addressed and the time required for effective participation in this phase.

### 5.2 Hourly Rates

We previously awarded compensation at the requested rates for Mr. Florio's and Ms. Mueller's work in 1995-1996. (See D.96-06-020 and D.96-08-023.) These awards establish the reasonableness of TURN's request in this proceeding.

For Mr. Finkelstein, TURN requests an hourly rate of \$210 for work performed in 1995 and \$220 for work performed in 1996. We recently approved the 1995 requested rate for Mr. Finkelstein's work in both our electric industry restructuring proceeding and Phase 2 of this proceeding. (See D.96-06-020 and D.96-08-023.) Since TURN's request would establish the hourly rate for Mr. Finkelstein throughout 1996, we must consider the market rates for lawyers with comparable experience.

As TURN describes in its request, Mr. Finkelstein is a 1985 graduate of Northeastern University School of Law, and is a member of the California bar. After graduation, he worked for six years in legal services programs, with an active litigation caseload and an emphasis in consumer law and government benefit programs. Since joining TURN's staff in early 1992, Mr. Finkelstein has been assigned full responsibility for the organization's work on electric utility issues and has represented TURN before this Commission in a number of major regulatory proceedings including (most recently), Phase 2 of Pacific Gas and Electric Company's 1996 Test Year GRC; Phases 1, 2, and 3 of Edison's GRC and Edison's performance-based ratemaking proceeding. He also shares primary responsibility for developing and presenting TURN's positions in electric industry restructuring.

As we discussed in D.96-08-040, Mr. Finkelstein's experience and qualifications place him within the second tier of attorneys practicing before this Commission, approximating the expertise of Mr. Cavanagh of the Natural Resources Defense Council and Ms. Steck-Myers of California/Nevada Law Income Association (D.96-08-040, mimeo. p. 46.) We have awarded rates for these attorneys of between \$200 and \$235 per hour for work performed in 1994 and 1995. TURN's request of \$220 per hour for Mr. Finkelstein's work in 1996 is reasonable in light of those rates.

In setting the appropriate rates for attorneys practicing before this Commission, we have also found the annual survey of law firms, published in the periodical Of Counsel, to be instructive. (D.87-10-078, mimeo. p. 35, footnote 8.) Below are the reported ranges of associate and partner rates for the Bay Area firms that responded to the 1996 Of Counsel survey:<sup>2</sup>

<u>Firm</u>	<u>Associates</u>	<u>Partners</u>
Cooley Godward et al.	\$125 - \$215	\$230 - \$350
Farella, Braun & Martel	\$125 - \$235	\$250 - \$335
Fenwick & West	\$ 90 - \$225	\$210 - \$400
Landels, Ripley	\$125 - \$200	\$205 - \$295
Lillick & Charles	\$ 95 - \$205	\$195 - \$305
Long & Levit	\$120 - \$180	\$135 - \$350
Steeffel, Levitt & Weiss	\$105 - \$195	\$210 - \$330
Thelen, Marrin et al.	\$110 - \$220	\$235 - \$340
Townsend & Townsend and Crew	\$125 - \$215	\$215 - \$310
Wilson, Sosini et al.	\$125 - \$220	\$230 - \$350

TURN's request for Mr. Finkelstein's work in 1996 is also within the high-end associate and low-end partner rates, confirming our assessment that this request is reasonable.

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<sup>2</sup> 1996 Annual Survey of the Nation's Largest Law Firms OF COUNSEL 11, June 1996.

TURN also seeks to recover the cost of a small amount of outside consulting services performed on TURN's behalf by the staff of JBS Energy, Inc. TURN seeks a \$5/hour increase in the billing rates for Mr. Marcus and Mr. Nahigian for the two hours of their consulting work on Phase 2B. TURN justifies this increase by the fact that JBS Energy, Inc. has recently increased their billing rate to TURN.

We deny TURN's request for lack of sufficient showing. If TURN seeks to increase the billing rates for work performed by its consulting experts in 1996, it must present convincing arguments that such an increase is reasonable in light of comparable market rates and awards made to other experts in our proceedings. For the two hours of effort expended in Phase 2B, we will retain the 1995 hourly rates adopted in D.96-05-052 and D.96-08-023. Our decision today does not preclude TURN from seeking a higher 1996 rate for JBS Energy Inc. staff in a subsequent request for compensation; however, the burden of justification rests with TURN.

TURN also requests full hourly rates for its attorney's for the preparation of TURN's compensation request. As we discussed in D.96-08-023, we have held that compensation requests are essentially bills for services, and do not require a lawyer's skill to prepare. Accordingly, we have reduced the attorney's rate for time spent preparing the compensation request. However, we have also recognized

exceptions to this policy when the compensation claim involves technical and legal analysis deserving of compensation at higher rates. In this instance, we believe that TURN's analysis of its contribution to our Phase 2B decision warranted analysis that went well beyond a straightforward accounting of expenditures by issue. We therefore award TURN the full hourly rate for work on its compensation request.

With the exception noted above, we find TURN's requested hourly rates to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

In addition, TURN's request for \$1,479.71 for ancillary expenses is reasonable, especially considering the number of filings submitted by TURN and others in Phase 2B.

**6. Award**

We award TURN \$71,254.71 calculated as described above.

Attorney Fees

Robert Finkelstein (TURN)					
20.0	hours	x	\$210	=	\$ 4,200.00
237.75	hours	x	\$220	=	52,305.00
Michel Peter Florio (TURN)					
49.25	hours	x	\$260	=	\$ 12,805.00
Theresa Mueller (TURN)					
1.5	hours	x	\$185	=	\$ 277.50
Subtotal				=	\$ 69,587.50



the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

**Findings of Fact**

1. TURN is eligible for intervenor compensation and has made a timely request for compensation for its contribution to D.96-08-025

2. TURN contributed substantially to D.96-08-025.

3. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

4. TURN did not provide sufficient showing to justify an increase in hourly rates for the work done in 1996 by its expert consultants.

5. The miscellaneous costs incurred by TURN are reasonable.

**Conclusions of Law**

1. TURN has fulfilled the requirements of Sections 1801-1812 which governed awards of intervenor compensation.

2. TURN should be awarded \$71,254.71 for its contribution to D.96-08-025.

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



ORDER

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$71,254.71 in compensation for its substantial contribution to Decision 96-08-025.

2. Southern California Edison Company (Edison) shall pay TURN \$71,254.71 within 30 days of the effective date of this order. Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning December 21, 1996, and continuing until full payment is made.

This order is effective today.

Dated February 19, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners