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Decision 98-02-092 February 19, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company to Adopt a Performance-Based Ratemaking (PBR) Mechanism Effective January 1, 1995

Application 93-12-029  
(Filed December 23, 1993)

**ORIGINAL**

**OPINION AWARDING INTERVENOR COMPENSATION**

This decision grants The Utility Reform Network (TURN) an award of \$145,697.51 in compensation for its contribution to Decision (D.) 96-09-092.

**1. Background**

By D.96-09-092, we adopted a Performance-Based Ratemaking (PBR) mechanism for Southern California Edison Company (Edison) for recovery of its transmission and distribution or non-generational based revenue requirements. TURN actively participated in this proceeding. TURN presented direct testimony, and cross-examined witnesses, and filed briefs. TURN, along with other consumer organizations, formed Consumer Alliance for Electric Rate Reductions (CAERR). Through CAERR (the Joint Parties), TURN presented further testimony.

TURN filed its request for an award of compensation on December 2, 1996, to which Edison responded on January 2, 1997. On January 17, 1997, TURN replied to Edison's response.

**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. TURN timely filed an NOI after the first prehearing conference.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) 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 "substantial contribution" means that:

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

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. Contributions to Resolution of Issues**

TURN asserts that it made "substantial contributions" in two areas of the decision. First, TURN argues that while its argument that the Commission should reinvigorate the general rate case process by eliminating supplemental regulatory procedures was ultimately rejected, the Commission did adopt TURN's view that the Electric Revenue Adjustment Mechanism (ERAM) should be eliminated. (See D.96-09-092 [adopting, generally, TURN's views on ERAM].) Second, TURN submits

that the Commission adopted a significant portion of the Joint Parties' CPI-X-type mechanism, the progressive sharing proposal.<sup>1</sup>

Edison takes issue with TURN's characterization of its contribution and requests that the Commission deny full compensation. First, it argues that TURN's proposal to revamp the general rate case (GRC) process was contrary to the Commission's expressed policy to replace traditional ratemaking with performance-based ratemaking. Second, it argues that TURN's contribution to the Commission decision to eliminate ERAM was minimal because the Commission did not expressly adopt it; because ERAM was not eliminated in other accounts; and because the Commission instead adopted the Division of Ratepayer Advocates' proposal for a rate cap. Third, Edison argues that the progressive sharing proposal ultimately adopted by the Commission was not the Joint Parties'. Finally, Edison argues that any hours connected with CAERR are noncompensable because its main product was a report on rates which was "seriously flawed" and "does not appear to have made any impact on the Commission's decision in this proceeding."

Unlike Edison, we are not quick to dismiss as insubstantial contributions not directly reflected in the Commission's final decision. In D.96-05-052, we reiterated our position that substantial participation does not require the party to ultimately prevail. Instead, we noted that:

"While [the] decisions did not adopt all of TURN's recommendations, both relied substantially on TURN's efforts in identifying issues, analyzing data, and presenting policy options. We are also aware that TURN attended all hearings and participated in every major aspect of the proceeding. The extent of TURN's participation in the day-to-day

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<sup>1</sup> TURN also seeks compensation for its work in "convinc[ing] the Commission to issue the OII that was consolidated with Edison's application." (TURN Req. at p. 11.) They note that the OII billing might appear relatively high but that this is due to TURN's attempts to build consensus ("draft[ing] by committee") among customer representatives. (*Id.*) Edison does not dispute OII compensation, and the OII was issued so this contribution was clearly substantial.

activities of such a complex proceeding promotes a type of understanding of procedural and substantive issues that we encourage." (D.96-05-052, slip. op. at p. 5.)

In this case, TURN has made a valuable contribution by identifying issues and presenting policy options. Our decision did adopt portions of TURN's ERAM-elimination and progressive-sharing proposals. This satisfies the statutory definition of substantial contribution entitling the parties to full compensation. (See PU Code, § 1802(h).) Finally, TURN's explicit contribution to the Administrative Law Judge's proposed decision "reinforces a substantial contribution to an order or decision." (D.92-08-030, slip op. at p. 9.)

For the foregoing reasons, TURN should be compensated based on the entirety of its participation in the hearing.

**4. The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$147,405.01 as follows:

Attorney and Expert Witness Fees

Robert Finkelstein

1994	308.75 hours	x	\$200	=	\$ 61,750.00
1995-96	187.05 hours	x	\$210	=	\$ 39,280.50

Michel Peter Florio

FY 1994	10.75 hours	x	\$235	=	\$ 2,526.25
FY 1995	32.90 hours	x	\$250	=	\$ 8,225.00
FY 1996	4.00 hours	x	\$260	=	\$ 1,040.00

Theresa Mueller

1994-95	17.25 hours	x	\$160	=	\$ 2,760.00
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Dr. Eugene P. Coyle

1994	96.00 hours	x	\$125	=	\$ 12,000.00
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Subtotal		=			\$ 127,581.75
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JBS Energy, Inc.

William Marcus

74.50 hours	x	\$135	=	\$ 10,057.50
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Jeff Nahigian

47.75 hours	x	\$75	=	\$ 3,581.25
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Gayatri Schilberg					
4.50 hours	x	\$95	=	\$	427.50
JBS Energy, Inc. Expenses			=	\$	1,422.39
		<b>Subtotal</b>	=	\$	15,488.00
		<b>Total</b>	=	\$	147,405.01
 <b><u>Other Reasonable Costs</u></b>					
Photocopying expense			=	\$	2,726.80
Postage costs			=	\$	608.08
Fax charges			=	\$	687.80
Phone expense			=	\$	311.94
		<b>Subtotal</b>	=	\$	4,334.62

**4.1 Hours Claimed**

In its request, TURN documented the claimed hours by presenting daily breakdown of hours with a brief discussion of each activity, noting the attorney assigned to each activity. TURN also broke down the hours devoted to each issue and activity into several categories.

Edison asks that hours be reduced with respect to TURN's argument that the Commission adopt a reinvigorated GRC process because the Commission had made its thoughts clear about moving forward with a performance-based process. We agree with TURN that its position was not directly inconsistent with Commission pronouncements. TURN attempted to present a more efficient and rational plan than the preceding scheme; this is generally consistent with the Commission's performance-based ratemaking goals. Further, Edison states that because the Commission did not fully adopt TURN's ERAM-elimination proposal, no award on the issue should be forthcoming. We believe, to the contrary, that TURN's contribution, as above discussed, on this issue was substantial.

Edison further disputes TURN's billing of 75% of the time with respect to CAERR; TURN claims that 75% of CAERR time accurately reflects the amount of time directly related to this proceeding. We reject Edison's position because TURN has not sought compensation for the hours associated with the CAERR study. Additionally, contrary to Edison's position, TURN did not charge time engaged in media

communications. Further, rather than punish the formation of coalitions among consumer groups—such as CAERR—as Edison would have us do, the Commission wishes to encourage their formation because it produces more efficient litigation and ultimately savings to ratepayers.

Given the substantial contribution TURN made to the development of this proceeding, the hours billed are reasonable.

#### 4.2 *Hourly Rates*

TURN correctly observes that the hourly rates requested for its attorneys Mr. Finkelstein, Mr. Florio,<sup>2</sup> and Ms. Mueller are consistent with those already approved by the Commission. (See D.96-09-024, D.95-02-018 [Finkelstein 1994]; D.96-08-023, D.96-04-087 [Finkelstein 1995]; D.95-04-050, p. 8, D.95-05-003, p. 11 [Florio fiscal years 1993-94 and 1994-95]; D.96-06-020 [Florio fiscal year 1995-96]; D.96-06-020 [Mueller fiscal year 1994-95].) Similarly, Dr. Coyle's rate of \$125 per hour during 1994 was approved by the Commission. (D.96-08-040.)

TURN asserts that the charges billed by its consultant JBS Energy, Inc. are reasonable for several reasons. First, the principal, Mr. Marcus, participated heavily in the presentation of the joint parties' testimony and delegated tasks to lower-priced associates. Second, TURN seeks only recovery for its share of the Joint Parties' costs for JBS' services. And, third, JBS's rates were those which they actually billed to TURN and reflected with JBS's standard billing rates during the time period. Our review of compensation awards indicates that the rates charged by JBS principals and associates have been previously approved. (See, e.g., D.96-08-023; D.96-08-029; D.96-04-087; D.96-10-072; D.96-09-024.) TURN also requests compensation for unitemized expenses incurred by JBS during the proceeding in the amount of \$1,422.39.

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<sup>2</sup> Mr. Finkelstein and Mr. Florio billed compensation-related activities at their normal rates. As is commission practice (see, e.g., D. 96-08-023, D.97-02-047, and D.97-02-048), we half Mr. Finkelstein's and Mr. Florio's rates for the 14.75 hours and 1.25 hours, respectively, spent on compensation-related activities.

We find TURN's requested hourly rates and expenses to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

#### **4.3 Other Costs**

TURN requests \$4,344 (3% of the total award sought) for other costs (e.g., copying, postage, telephone) directly related to the proceeding. TURN's costs are reasonable in light of the significant contribution it made to the proceeding and the relatively small nature of the request which reflects TURN's economy.

#### **5. Award**

We award TURN \$145,697.51, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing February 15, 1997 (the 75<sup>th</sup> day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Advisory and Compliance Division may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, 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 has made a timely request for compensation for its contribution to D.96-09-092.
2. TURN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. TURN contributed substantially to D.96-09-092.
4. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

5. The miscellaneous costs incurred by TURN are reasonable.

**Conclusions of Law**

1. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$145,697.51 for its contribution to D.96-09-092.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED that:**

1. The Utility Reform Network (TURN) is awarded \$145,697.51 in compensation for its substantial contribution to Decision 96-09-092.
2. Southern California Edison Company (Edison) shall pay TURN \$145,697.51 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 February 15, 1997, and continuing until full payment is made.



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3. Application 93-12-029 is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEPPER  
Commissioners