

ALJ/BAR/avs

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Decision 98-08-016 August 6, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY to Adopt Performance Based Regulation ("PBR") for Base Rates to be Effective January 1, 1997.

Application 95-06-002
(Filed June 1, 1995)

OPINION AWARDING COMPENSATION

This decision grants, in part, the Requests for Compensation filed by the The Utility Reform Network (TURN) and the Natural Resources Defense Council (NRDC) for their substantial contributions to Decision (D.) 97-07-054. We award TURN \$247,476 of the \$249,371.87 it requests. We award NRDC \$11,380 of the \$12,382.40 it requests. TURN also seeks compensation for its substantial contribution to D.98-01-040 in the amount of \$7,354. We award TURN \$6,769 for its contribution to this second decision in this docket.

Background

In D.97-07-054, we considered a proposal by Southern California Gas Company (SCG) for adoption of performance-based ratemaking (PBR) for the portion of SCG's rates that recovers the costs of providing gas utility service.

D.97-07-054 adopted a PBR system for SCG which differs in several respects from the proposal advanced by SCG. Most significantly, we adopted a system which requires SCG to share with ratepayers the savings produced by the indexing method. We also adopted an indexing method, adjustments and exclusions, provisions to ensure that high standards of service quality and safety are maintained, and a base margin to which the indexing is applied.

SCG filed its application on June 1, 1995. Filing of the formal application was preceded by a series of workshops held by SCG in December 1994 and January 1995, in which SCG met with interested parties to present the contemplated proposal. SCG's application included some changes from its original proposed concept, which were made after the workshops.¹

The formal evidentiary hearing commenced December 2, 1996, and concluded December 19, 1996. Two rounds of briefs were filed, and the proceeding was submitted on February 14, 1997. The decision was adopted on July 16, 1997, and mailed on July 22, 1997. On September 22, 1997, TURN filed a request for compensation. NRDC filed its request for compensation on September 16, 1997.²

In D.98-01-040, we adopted the core fixed cost account adjustment mechanism SCG proposed in compliance with D.97-07-054, with modifications jointly recommended by SCG, the Commission's Office of Ratepayer Advocates (ORA), and TURN. The modifications were placed before the Commission in the form of a motion, which was granted. SCG was directed to file an advice letter with the optional tariffs and a pro forma contract for negotiated rates, and to track and submit documentation of any negotiated contracts and optional tariffs. D.98-01-040 was adopted on January 21, 1998, and mailed January 23, 1998. On March 24, 1998, TURN filed a request for compensation for its stated contribution

¹ Conceptually, the most significant of these was a change from the Consumer Price Index (CPI) to an industry-specific index in the indexing formula.

² NRDC was permitted to amend its request to correct a deficiency. The amendment was filed May 28, 1998, at which time it was complete.

to D.98-01-040. SCG filed a response in support of TURN's claim that it made a substantial contribution to D.98-01-040.

Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (Notice) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The Notice 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(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 on 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.

NOI to Claim Compensation

TURN timely filed its Notice within 30 days after the prehearing conference, which was held on September 25, 1995. In its Notice, TURN states that in this proceeding it will represent the interests of residential and small commercial customers, and that its articles of incorporation authorize TURN to represent residential customers. It included a showing of significant financial hardship by referencing the rebuttable presumption of eligibility for compensation provided in § 1804(b), which was established by Administrative Law Judge (ALJ) Barnett's January 5, 1995, ruling in Application (A.) 94-05-044, for proceedings commencing within one year after the date of that ruling.

It is clear from its Notice and subsequent participation that TURN, an organization so authorized by its articles of incorporation, represented the interests of residential customers in this proceeding. No response to TURN's Notice was filed. Its presumption of eligibility stands. Having timely filed its Notice, complete with a statement of the nature and extent of its participation as a residential customer group and an estimated budget of \$158,750, and having met the financial hardship requirement, we find that TURN is eligible to request compensation in this proceeding.

NRDC filed its Notice along with a Motion for Leave to File Out of Time (Motion) on October 30, 1995, three business days later than otherwise required by the statute. In its Motion, NRDC explains that it filed out of time due to a shift in personnel; and that no party was prejudiced by the delay. NRDC makes no claim that the schedule would not reasonably allow it to identify the issues within the 30 day timeframe for the filing of the Notice. No party filed a

response to NRDC's Motion. We grant the motion and will consider NRDC's Notice.

In its Notice, NRDC states that it will represent the interests of a minimum of 19,000 California members who purchase utility services in California.³ We assume from its filing that NRDC participated in this proceeding as a "representative who has been authorized by a [group of] customer[s]" since it does not indicate that the NRDC articles of incorporation or bylaws authorize it to represent the interests of residential customers. (See §1802(b) for the definition of customer.) NRDC included in its Notice a sufficient statement of the nature and extent of its planned participation, and an estimated budget of \$41,750. NRDC stated that it would include detailed documentation of its significant financial hardship in its Request for Compensation (Request).

In its Request, NRDC demonstrates significant financial hardship by referencing the rebuttable presumption of eligibility for compensation provided in § 1804(b), which was established by ALJ Barnett's February 25, 1997, ruling in A.96-10-038, for proceedings commencing within one year after the date of that ruling. No party filed a response rebutting this presumption. However, this finding cannot establish a rebuttable presumption of eligibility for a proceeding commenced in 1995. The Assigned ALJ invited NRDC to amend its Request by

³ In its amendment to this notice (described later) NRDC increases its California-resident member number to 65,000. We note that NRDC does not specify whether these members are customers of utilities that are subject to our jurisdiction. In future Notices and/or Requests for Compensation, we expect NRDC to be more specific as to how it qualifies as a representative of customers, as that term is defined in §1802(b). We recently addressed this topic in D.98-04-059, our Opinion Revising the Intervenor Compensation Program.

adding new material to the document which shows significant financial hardship.

On May 28, 1998, NRDC filed and served an amendment to its Notice. NRDC claims that although its California members who are customers of jurisdictional utilities may eventually experience lower electricity bills as a result of NRDC's advocacy for cost-effective energy efficiency programs and other cost-effective long-term investments through the PBR proceeding, the economic interest represented by such savings is minute in comparison to the cost of participation. We agree that the appropriate significant financial hardship test to be applied to NRDC is the comparison test. We agree that the economic interest of an individual member of NRDC, though not quantified, is small in comparison to the costs of effective participation in this proceeding, which it had estimated as \$41,750, and realized at \$12,382.40. NRDC has complied with § 1804(a)-(b) and is a customer eligible to request compensation.

Contribution to Resolution of Issues

TURN

TURN argues that its contributions to D.97-07-054 and D.98-01-040 were substantial and warrant an award of the full costs of participation, even though it did not prevail on all of its recommendations and contentions. It provided citations to the decision and record to support its claimed contributions.

With respect to D.97-07-054, TURN specifically identifies contributions it made on six issue areas. First, TURN argues it made a substantial contribution through its recommendations on the PBR indexing and sharing mechanism. Second, the incompatibility of the SCG proposals with the global settlement. Third, rejecting the SCG modifications to the residential rate design. Fourth, rejecting certain SCG adjustment accounts (the core fixed cost account, the

weather normalization mechanism, and the energy efficiency adjustment). Fifth, the customer service and employee safety standards incorporated into the SCG, ORA, and TURN settlement. And finally, TURN argues it made a substantial contribution in opposing SCG's executive compensation recommendations.

We agree that TURN made a substantial contribution. It is clear from the record and a plain reading of D.97-07-054 that the basic logic of the TURN/Department of General Services (DGS) recommendations on the indexing mechanism formed the basis for the adopted approach. It is also clear that the adopted sharing mechanism was the progressive sharing mechanism proposed by TURN/DGS. The Commission agreed with TURN and ORA, that the SCG proposal would violate the terms of the global settlement, and in so stating relied upon the TURN arguments. The Commission also agreed with TURN's procedural and policy arguments that the residential rate design should not be changed in the PBR proceeding. The Commission adopted a settlement reached between SCG, ORA, and TURN which resolved, among other things, the contested customer service issues and employee safety standards. The Commission also adopted TURN's recommendation which addressed excessive executive compensation.

While TURN did not prevail in every recommendation and contention it presented, it did prevail on these major issue areas identified in the Commission decision, which includes the issue area identified in the decision as "most significant" - the indexing and sharing mechanisms. In some respects, TURN participated on issues that ORA also presented in testimony. However, we conclude that TURN's recommendations and contentions were distinct in most respects, and in other respects were complimentary.

With respect to D.98-01-040, TURN asserts that it made a substantial contribution because the proceeding was resolved with the adoption of the SCG,

TURN, and ORA joint motion. The joint motion proposed a certain adjustment mechanism for SCG's core fixed cost account. TURN asserts that the joint motion was influenced by TURN's comments identifying flaws in SCG's original proposal which resulted in shareholders not really bearing the risk of discounts.

Since TURN was a key participant in developing the proposal recommended in the joint motion, and the joint motion was adopted with little modification, we conclude that TURN made a substantial contribution to D.98-01-040. TURN's participation, which was coordinated with ORA, was complimentary to, and not duplicative of, ORA's participation.

NRDC

NRDC states that its focus in the portion of the proceeding which lead to D.97-07-054 was on the inconsistencies in SCG's proposed rate cap and elimination of the core fixed cost account with Commission and Legislative policy; the inadequacy of SCG's proposed energy efficiency adjustment factor in achieving Commission objectives; the inappropriateness of SCG's proposed core rate design changes; and the treatment of demand side management and research, development, and demonstration balancing accounts. NRDC cites specific findings and conclusions it claims "reflect" NRDC's recommendations. NRDC did not address whether its claimed contribution was unique from, complimentary to, or in any manner duplicative of other customer representatives.

It is correct that NRDC participated on the following issues: whether the SCG proposal was consistent with our PBR policy; the appropriateness of SCG's proposed energy efficiency adjustment factor; whether rate design changes should be made; the treatment of demand side management balancing accounts; and the treatment of research, development, and demonstration balancing

accounts. However, the Commission's ultimate resolution of at least the first three of these five issues rested largely on the same or similar arguments made more persuasively by other parties. The Commission initially rejected NRDC's recommendation on the fourth issue, that the \$18 million demand-side management direct assistance funding level be retained, and instead adopted SCG's recommendation to reduce funding to \$12 million. However, on July 23, 1998, while this request was pending, the Commission adopted D.98-07--. In that decision, we acknowledged that the reduction to \$12 million produced an inconsistent result from our determination in Ordering Paragraph 7 of D.97-02-014, in the Electric Restructuring Proceeding, Rulemaking 94-04-031/ Investigation 94-04-032, where we directed annual funding for gas energy efficiency and low income assistance programs to be established initially at 1996 levels. In D.98-07- , we modified D.97-07-054 to retain the \$18 million funding level for which NRDC had advocated, finding that the \$12 million funding level was adopted erroneously through inadvertence. But for this error, NRDC would have prevailed in D.97-04-054. We therefore conclude that it made a substantial contribution on this issue. NRDC also made a unique contribution with respect to the treatment of research, development, and demonstration balancing accounts. On this subject, the Commission was persuaded by NRDC to retain the one-way balancing account.

We therefore conclude that NRDC made a substantial contribution on the five claimed issues, as described in the preceding paragraph. However, because that contribution was largely duplicative with respect to three of the issues, we will reduce NRDC's award.

TURN's Requested Award

TURN requests \$249,371.87 for its contribution to D.97-07-054 as follows:

Attorney Fees**Michel Peter Florio**

1994-95	12.25 hrs	X	\$250/hr	\$ 3,062.50
1995-96	13.25 hrs	X	\$260/hr	\$ 3,445.00
1996-97	76.50 hrs	X	\$275/hr	\$ 21,027.50

Theresa Mueller

1994-95	6.0 hrs	X	\$160/hr	\$ 960.00
1995-96	170.50 hrs	X	\$185/hr	\$ 31,542.50
1996-97	435.0 hrs	X	\$200/hr	\$ 87,000.00

Paul Stein

1997	29.00 hrs	X	\$160/hr	\$ 4,640.00
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Total Attorney Fees \$151,687.50

Expert Witness Fees**Steve Helmich**

3.0 hrs	X	\$40/hr	\$ 120.00
6.6 hrs	X	\$45/hr	\$ 297.00

William Marcus

7.75	X	\$135/hr	\$ 1,046.25
82.25	X	\$140/hr	\$ 11,515.00
14.25	X	\$145/hr	\$ 2,066.25

Jeff Nahigian

235.75 hrs	X	\$80/hr	\$ 18,860.00
7.25 hrs	X	\$85/hr	\$ 616.25

Greg Ruzovan

0.65 hrs	X	\$75/hr	\$ 48.75
4.5 hrs	X	\$80/hr	\$ 360.00

Gayatri Schilberg

142.0 hrs	X	\$95/hr	\$ 13,490.00
320.75 hrs	X	\$100/hr	\$ 32,075.00
Total Expert Witness Fees			\$ 80,494.50

Expenses	
Photocopying	\$ 13,107.77
Postage	\$ 824.84
Federal Express	\$ 90.50
Long Distance Telephone	\$ 414.46
Fax charges	\$ 1,048.50
Lexis Research	\$ 352.50
JBS Costs (travel, fax, Fed Ex)	\$ 1,351.30
Total Expenses	\$ 17,189.87

Total Request **\$249,371.87**

TURN requests \$7,354.39 for its contribution to D.98-01-040 as follows:

Attorney Fees

Michel P�ter Florio			
2.75 hrs	X	\$260/hr	\$ 715.00

Theresa Mueller			
28.25 hrs	X	\$195/hr	\$ 5,508.75

Expert Witness Fees

William Marcus			
7.0	X	\$145/hr	\$ 1,015.00
		Total Fees	\$ 7,238.75

Expenses	
Photocopying	\$ 38.14
Postage	\$ 26.95
Federal Express	\$ 36.75
Long Distance Telephone	\$ 13.80
Total Expenses	\$ 115.64

Total Request **\$ 7,354.39**

Hours Claimed by TURN

TURN presents careful documentation of the task performed by each attorney and witness. For D.97-07-054, this information is allocated among the following activities: base, activities required for participation; procedural, which includes motions, responses and discussions regarding procedural requirements; compensation; settlement; hearings, which also includes ex parte-related activities; and writing/analysis, which includes discovery. TURN also allocates its attorney and expert time among the specific issues on which it participated, using the same issue groupings TURN applied in its argument supporting its substantial contribution.⁴ TURN points out that part of witness Marcus' time was billed to the DGS since TURN/DGS jointly presented his testimony. For D.98-01-040, this information is allocated among time spent reviewing SCG- and Commission-produced documents, time spent on TURN's comments, and time spent in negotiations. TURN states that since the core fixed cost account was the only issue addressed, further allocation is not possible or appropriate.

TURN's detailed allocation of time spent in its participation leading to D.97-07-054 and D.98-01-040 complies with our requirements. We find the hours for which it seeks compensation reasonable.

TURN's Hourly Rates

The hourly rates recounted from TURN's request do, in some instances, include an increase from a previously adopted rate. Among these are requests for increases which cover a time period for which the Commission has already

⁴ TURN omitted an allocation by issue for attorney Stein. However, a review of his allocation by activity makes it clear that all of his time was spent on a single issue, new products and services.

considered and ruled on the request for a fee increase, in another proceeding. Other of the rates have been adopted by the Commission in earlier decisions, and TURN merely requests that the Commission apply that same rate for the same time period in this proceeding. We will consider the hourly rates requested for each advocate and attorney, and rule on a reasonable hourly rate for each person in turn.

TURN requests an hourly rate of \$250 for the work of Michel Peter Florio from fiscal 1994-95. We previously adopted this rate for similar services performed by Mr. Florio after June 30, 1994, and will apply it here. (See D.94-04-050, mimeo. at 8.) For fiscal 1995-96, TURN requests an hourly rate of \$260 for the work of Mr. Florio. We previously adopted this rate for similar services performed by Mr. Florio and will apply it here. (See D.96-06-020, mimeo. at 3.) TURN requests an increase in the rate for Mr. Florio's fiscal year 1996-97 hours. We considered and ruled on this same fee request in A.96-03-031, and found it reasonable to award Mr. Florio at a rate of \$275 for work performed in fiscal year 1996-97, and will apply the same rate here since similar services are performed. (See D. 97-12-076, mimeo. at 11-12.)

Similarly, the rates TURN requests for the work performed by Theresa Mueller in 1994-96 were previously adopted by the Commission. (See D.95-05-003, mimeo. at 10-11 (1994 rate), and D.96-07-046, mimeo. at 10 (fiscal year 1995-96 rate).) Since similar services were performed by Ms. Mueller, we will apply the same rates here for the same time periods. Specifically, we will apply an hourly rate of \$160 for Ms. Mueller's work performed in 1994-95 and \$185 for her work in 1995-96. TURN requests an increase in the rate for Ms. Mueller's fiscal year 1996-97 hours. We considered and ruled on this same fee request in A.96-03-031, and found it reasonable to award Ms. Mueller at a rate of

\$195 for work performed in fiscal year 1996-97, and will apply the same rate here since similar services are performed. (See D. 97-12-076, mimeo. at 11-12.)

TURN requests an hourly rate of \$160 for Paul Stein's work, performed in 1997. Mr. Stein is a 1996 graduate of the University of San Francisco School of Law. He was admitted to the California Bar later that same year. Prior to joining TURN, Mr. Stein worked for one year as a legal intern to the Commission's Administrative Law Judge Division. He also was a summer extern in the San Francisco regional office of the National Labor Relations Board. Before entering law school, Mr. Stein worked for three years as a reporter for a daily newspaper, covering state and local government and politics. TURN asserts that Mr. Stein's credentials are substantially similar to those Ms. Mueller brought with her when she joined TURN's staff. At that time, the Commission awarded Ms. Mueller an hourly rate of \$160 for work performed in 1994. We agree with TURN that the appropriate hourly rate for Mr. Stein should, given the similarities in experience and education between he and Ms. Mueller, be comparable to the rate we initially applied to Ms. Mueller's work. Therefore, accounting for the passage of three years time, we set Mr. Stein's hourly rate for work performed in 1997 at \$170.

We also find reasonable the hourly rates TURN requests for the work performed by its expert witnesses and analysts, JBS Energy, including the modest increases in the rates from previously approved rates for Mssr. Helmich, Marcus and Nahigian. TURN has demonstrated that the rates it requests are the actual recorded or billed costs that TURN incurred in retaining JBS Energy's services, and that these rates are at, and in some instances below, comparable market rates.

TURN also argues that we compensate it at the full attorney hourly rate for the time spent preparing the two compensation requests, rather than at one-half the otherwise applicable attorney hourly rate. We have applied the lower rate when we have concluded that the preparation of the request did not require the skill of an attorney. TURN's request for compensation related to D.97-07-054 addressed technically complex issues, numerous issues for which a substantial contribution argument was made, argument justifying increased hourly rates, and covered several years of participation. Given the level of complexity and extent of the arguments made, we will apply the full hourly rate to the attorney time spent on compensation issues regarding D.97-07-054. TURN's request related to D.98-01-040, however, did not require the skill of an attorney to prepare. It covered a single issue, included no argument on increased attorney rates, and included the same argument - word for word -- to justify the increase in JBS Energy rates. While very limited attorney time to supervise and review the preparation of this request would have been reasonable, 6 hours of attorney time is not. The work performed to prepare this request could have been completed by a lower-paid staff member with skills that match the task, under the supervision of an attorney, for a net savings to ratepayers. We will compensate TURN at one-half Ms. Mueller's hourly rate for the 6 hours she spent preparing the compensation request for TURN's substantial contribution to D.98-01-040.

TURN's Other Costs

TURN's expenses related to D.97-07-054 total \$17,189.87, and include \$1,351.30 in expenses billed to TURN by its consultants, JBS Energy. A large portion of these costs are attributable to photocopying expenses for the many pleadings, testimony, and correspondence TURN generated in this portion of the

proceeding over its 3-year duration. Although a large figure, it is in keeping with the duration and complexity of the proceeding and the scope of TURN's participation. TURN incurred an additional \$115.64 in expenses associated with D.98-01-040. We find TURN's other costs reasonable, and fully compensable.

TURN's Award

TURN should be awarded \$247,476 for its substantial contribution to D.97-07-054, as follows:

Attorney Fees

Michel Peter Florio

1994-95	12.25 hrs	X	\$250/hr	\$ 3,062.50
1995-96	13.25 hrs	X	\$260/hr	\$ 3,445.00
1996-97	76.50 hrs	X	\$275/hr	\$ 21,027.50

Theresa Mueller

1994-95	6.0 hrs	X	\$160/hr	\$ 960.00
1995-96	170.50 hrs	X	\$185/hr	\$ 31,542.50
1996-97	435.0 hrs	X	\$195/hr	\$ 84,825.00

Paul Stein

1997	29.00 hrs	X	\$170/hr	\$ 4,930.00
Total Attorney Fees				\$149,792.00

Expert Witness Fees

Steve Helmich

3.0 hrs	X	\$40/hr	\$ 120.00
6.6 hrs	X	\$45/hr	\$ 297.00

William Marcus

7.75	X	\$135/hr	\$ 1,046.25
82.25	X	\$140/hr	\$ 11,515.00
14.25	X	\$145/hr	\$ 2,066.25

Jeff Nahigian

235.75 hrs	X	\$80/hr	\$ 18,860.00
7.25 hrs	X	\$85/hr	\$ 616.25

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Greg Ruzovan				
	0.65 hrs	X	\$75/hr	\$ 48.75
	4.5 hrs	X	\$80/hr	\$ 360.00
Gayatri Schilberg				
	142.0 hrs	X	\$95/hr	\$ 13,490.00
	320.75 hrs	X	\$100/hr	\$ 32,075.00
	Total Expert Witness Fees			\$ 80,494.50

Expenses				
Photocopying				\$ 13,107.77
Postage				\$ 824.84
Federal Express				\$ 90.50
Long Distance Telephone				\$ 414.46
Fax charges				\$ 1,048.50
Lexis Research				\$ 352.50
JBS Costs (travel, fax, Fed Ex)				\$ 1,351.30
			Total Expenses	\$ 17,189.87

Total Award (D.97-07-054, rounded) \$247,476.00

TURN should be awarded \$6,769 for its substantial contribution to

D.98-01-040, as follows:

Attorney Fees				
Michel Peter Florio				
	2.75 hrs	X	\$275/hr	\$ 715.00
Theresa Mueller				
	22.25 hrs	X	\$195/hr	\$ 4,338.75
	6.0 hrs	X	\$97.50/hr	\$ 585.00

Expert Witness Fees

William Marcus

7.0	X	\$145/hr	\$ 1,015.00
Total Fees			\$ 6,653.75

Expenses

Photocopying	\$ 38.14
Postage	\$ 26.95
Federal Express	\$ 36.75
Long Distance Telephone	\$ 13.80
Total Expenses	\$ 115.64

Total Award (D.98-01-040, rounded) \$ 6,769.00

We therefore award TURN a total of \$254,245 for its participation in SCG's performance based ratemaking application.

NRDC's Requested Award

NRDC requests \$12,382.40 as follows:

Advocate Fees

Peter Miller	2 hrs	X	\$135/hr	\$ 270.00
Sheryl Carter	116.5 hrs	X	\$100/hr	\$11,650.00
Total Advocate Fees				\$11,920.00

Expenses

Photocopying	\$ 295.20
Postage	\$ 167.20
Total Expenses	\$ 462.40

Total Request \$12,382.40

Hours Claimed by NRDC

NRDC's advocates provide documentation indicating the number of hours that were devoted to this portion of the proceeding with a description of the activity or task performed. However, NRDC does not provide an allocation of the hours claimed by substantive issue. We have made this requirement known in many past decisions. NRDC, as an advocacy organization with a 15-year

history of participation before this Commission, should be well aware of our requirements.

This case demonstrates why the Commission has a need for allocation of costs and time by issue. NRDC's substantial contribution warrants full compensation for two of the issues it participated on, and partial compensation for a number of other issues. In the absence of an NRDC-prepared allocation of time (and costs) by issue, we must make a judgement as to the appropriate reduction in hours claimed by issue to arrive at a reasonable number of hours given the contribution made.

From the documentation, we conclude that a total of 27 hours were spent on basic participation activities (i.e. attending prehearing conference, reading proposed decision) necessary for effective participation; 83.5 hours were spent addressing the issues on which NRDC participated; and 8 hours were spent preparing the request for compensation. The hours spent on basic participation activities and preparation of the request for compensation are reasonable and should be compensated. Given NRDC's substantial contribution, which included considerable duplication, and a unique contribution on two of the five issues it identified, we reduce the 83.5 hours spent addressing issues to 73.48 to arrive at a reasonable number of hours spent on issues for which NRDC made a substantial contribution.⁵ This brings NRDC's total reasonable hours to 108.48.

⁵ We arrive at this number of hours by assuming NRDC spent equal amounts of time on the five issues ($83.5/5=16.7$ hours per issue). NRDC made a unique contribution on two issues (for 33.4 hours) and we apply a 20% reduction for duplication on the remaining 3 issues ($((3 \times 16.7) \times 0.8)=40.08$ hours).

NRDC's Hourly Rates

NRDC requests the Commission apply here, unchanged, hourly rates we have previously adopted. It asks that we apply an hourly rate of \$100 for the work performed by Sheryl Carter in 1995-97, and that we apply an hourly rate of \$135 for the work performed by Peter Miller in 1997. NRDC is correct that we previously adopted the \$100 hourly rate for Ms. Carter. (See D.96-08-040, mimeo. at 53, where that rate was applied to work performed in 1995-96.) NRDC states that we previously awarded compensation at an hourly rate of \$135 for work performed by Mr. Miller. We previously adopted the \$135 rate for Mr. Miller for work performed in 1992-93, and applied the same rate for work performed in 1995. (See D.96-05-052, mimeo. at 8, and D.96-08-040, mimeo. at 53.) We will apply the same rates here, \$100 and \$135, respectively, for the work performed by Ms. Carter in 1995-97, and for the work performed by Mr. Miller in 1997.

NRDC's Other Costs

NRDC incurred additional costs for postage and photocopying associated with its participation in this proceeding. These costs are reasonable and should be fully compensated for they are part of basic participation activities.

NRDC's Award

NRDC should be awarded \$8,040.00 for its substantial contribution to D.97-07-054, as follows:

Advocate Fees				
Peter Miller	2 hrs	X	\$135/hr	\$ 270.00
Sheryl Carter	106.48 hrs	X	\$100/hr	\$10,648.00
			Total Advocate Fees	\$10,918.00

Expenses		
Photocopying		\$ 295.20
Postage		\$ 167.20
	Total Expenses	\$ 462.40
Total Award	(rounded)	\$11,380.00

Interest and Record Keeping

Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate). Interest will be paid on the TURN award regarding D.97-07-054 commencing December 7, 1997, (the 75th day after TURN filed its request) and continuing until the utility makes its full payment of award. Interest will be paid on the TURN award regarding D.98-01-040 commencing June 7, 1998, (the 75th day after TURN filed its request) and continuing until the utility makes its full payment of award. Interest will be paid on the NRDC award regarding D.97-07-054 commencing September 10, 1998 (the 75th day after NRDC filed a complete request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN and NRDC on notice that the Commission Energy Division may audit their records related to this award. Thus, TURN and NRDC must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify specific issues for which TURN and NRDC request compensation, the actual time spent by each person, the applicable hourly rate, any 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.97-07-054 and D.98-01-040.

2. NRDC has made a timely request for compensation for its contribution to D.97-07-054.

3. TURN, an organization authorized by its articles of incorporation to represent the interests of residential customers, qualifies as a customer under § 1802(b), and is eligible, on the basis of an unrebutted presumption of eligibility, to claim compensation in this proceeding.

4. NRDC, a representative authorized by a group of customers, qualifies as a customer under § 1802(b).

5. NRDC has demonstrated that participation in this proceeding constitutes a significant financial hardship.

6. TURN made a substantial contribution to D.97-07-054 and D.98-01-040.

7. NRDC made a substantial contribution to D.97-07-054 on the five claimed issues, but that contribution was largely duplicative with respect to three of the issues.

8. The hours claimed by TURN are reasonable.

9. The hours claimed by NRDC for basic participation and compensation-related activities are reasonable. The hours NRDC spent on issues should be reduced to 73.48 hours to arrive at an amount that is reasonable, given that NRDC's substantial contribution included considerable duplication, and a unique contribution on two of the five issues it identified.

10. The attorney hourly rate claimed by TURN for preparing its compensation pleadings related to D.98-01-040 should be reduced by one-half to arrive at a rate reasonable for the skills needed to complete the task.

11. It is reasonable to apply the hourly rates requested by TURN for its attorneys where those rates were previously adopted by the Commission. An hourly rate of \$170 for the work performed by Mr. Stein in 1997 is reasonable.

12. TURN has demonstrated that the rates it requests for its expert witnesses and analysts, JBS Energy staff, are the actual recorded or billed costs that TURN incurred in retaining those services, and that these rates are at, and in some instances below, comparable market rates. The JBS Energy staff hourly rates are reasonable, including the modest increases in the rates from previously approved rates for Mssr. Helmich, Marcus and Nahigian.

13. It is reasonable to apply the hourly rates requested by NRDC since those rates were previously adopted by the Commission and similar services were provided in this proceeding.

14. The expenses incurred by TURN and NRDC are reasonable.

Conclusions of Law

1. TURN and NRDC have fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

2. TURN should be awarded \$254,245 for its contribution to D.97-07-054 and D.98-01-040.

3. NRDC should be awarded \$11,380 for its contribution to D.97-07-054.

4. This order should be effective today so that TURN and NRDC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$254,245 in compensation for its substantial contribution to Decision (D.) 97-07-054 and D.98-01-040.

2. The Natural Resources Defense Council (NRDC) is awarded \$11,380 in compensation for its substantial contribution to D.97-07-054.

3. Southern California Gas Company (SCG) shall pay these awards to TURN and NRDC within 30 days of the effective date of this order. SCG shall also pay interest on the awards at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest. Interest payments to TURN shall be calculated from December 7, 1997, on a principal of \$247,476, and from June 7, 1998, on a principal of \$6,769, and continue until full payment is made. Interest payments to NRDC shall be calculated from September 10, 1998 and continue until full payment is made.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

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