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Decision 98-10-030 October 8, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies Governing
Restructuring California's Electric Services
Industry and Reforming Regulation.

Rulemaking 94-04-031
(Filed April 20, 1994)

ORIGINAL

Order Instituting Investigation on the
Commission's Proposed Policies Governing
Restructuring California's Electric Services
Industry and Reforming Regulation.

Investigation 94-04-032
(Filed April 20, 1994)

OPINION AWARDING COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of \$167,158 and Utility Consumers' Action Network (UCAN) an award of \$243,155 in compensation for their contributions to Commission decisions issued in this docket, the electric industry restructuring rulemaking and investigation, since the issuance of Decision (D.) 95-12-063, the Preferred Policy Decision.

1. Background of Electric Restructuring

The electric industry restructuring and regulatory reform process culminated in the issuance of D.95-12-063, as modified by D.96-01-009, commonly referred to as the Preferred Policy Decision. In the Preferred Policy Decision, the Commission adopted a framework for competition in which customers have the right to choose their supplier of electricity. One of the effects of this new framework is to transform California's electricity systems from a bundled electric service system that is provided by the investor-owned electrical corporations, to a set of segmented functions including generation, transmission, and

distribution. The above-named intervenors participated in various roles during the restructuring process, and seek compensation for their efforts.

Since the issuance of the Preferred Policy Decision, the Commission has issued sixty-eight decisions in this docket. In its request for compensation, TURN seeks compensation in the amount of \$315,973 for its asserted substantial contribution to six decisions and to the general implementation of the goals set in the Preferred Policy Decision. TURN's request covers the time period January, 1996, to June, 1997. During this time period, the Commission issued thirty decisions in the electric restructuring docket.¹ Similarly, UCAN seeks compensation in the amount of \$347,604.26 for its asserted substantial contribution to seven decisions and the comments the Commission filed before the Federal Energy Regulatory Commission (FERC) regarding the power exchange and independent system operator issues. UCAN's request covers the time period January, 1996, to June, 1997.²

¹ Of the thirty decisions issued, the six TURN specifically cites in making its substantial contribution argument are D.96-12-077, regarding the Cost Recovery Plan; D.97-02-014, regarding Public Purpose Threshold Issues; D.97-02-021, which addressed applications for rehearing of the Preferred Policy Decision; D.97-05-039, regarding Revenue Cycle Services; D.97-05-040, the second interim opinion on Direct Access Implementation; and D.97-06-108, regarding Gas Public Purpose. TURN was awarded \$355,824.68 in this docket for its substantial contribution to the Preferred Policy Decision. (See D.96-08-040.)

² Of the thirty decisions issued, the seven UCAN specifically cites in making its substantial contribution argument are D.97-05-039, regarding Revenue Cycle Services; D.97-05-040, the second interim opinion on Direct Access Implementation; D.97-03-069, regarding the statewide Customer Education Program; D.97-02-014, regarding Public Purpose Threshold Issues; D.96-12-088, which provided the Updated Roadmap; D.96-10-074, which directed certain utilities to file authorized ratebase and baserate revenue requirements separating the totals between generation, transmission and distribution; and D.96-03-022, which modified the Preferred Policy Decision and established a procedural plan for achieving the transition to a restructured electric services industry, commonly called the Roadmap Decision. UCAN was awarded

Footnote continued on next page

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, the intervenor compensation governing statutes.³ 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(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."

\$189,975.16 in this docket for its substantial contribution to the Preferred Policy Decision. (See D.96-08-040.)

³ All future references to code sections are to the PU Code unless otherwise noted.

Section 1804(c) 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. Eligibility for Compensation and Timeliness of Requests

All parties have previously been found eligible to claim compensation in the electric restructuring proceeding. The findings of eligibility for UCAN and TURN were made in the Administrative Law Judge Ruling dated August 2, 1994. A customer eligible for an award of compensation in one phase of a proceeding remains eligible in later phases. (See Rule 76.6 of the Commission's Rules of Practice and Procedure). Both parties, therefore, remain eligible for compensation.

Section 1804(c) requires that any request for compensation be filed within 60 days of the issuance of the decision for which compensation is sought. TURN filed its request on July 7, 1997, and UCAN filed its request on May 30, 1997, all within 60 days of the date of issuance of D.97-05-039 and D.97-05-040. Although the statute and our Rule 76.72 allow a customer to file a request for compensation within 60 days of the date of issuance of "an order or decision that resolves an issue on which the customer believes it made a substantial contribution", TURN and UCAN chose to wait and file one request covering several decisions rather than file, e.g., as early as May 1996 to be compensated for UCAN's asserted contribution to D.96-03-022.

4. Substantial Contributions

In evaluating compensation requests in a proceeding such as this which involves multiple intervenors, we must consider both whether an intervenor has made a substantial contribution and to what extent, if any, that contribution

duplicated the contribution of any other intervenor. When we considered whether duplication of contribution warranted a reduction in the award in the two prior decisions on intervenor compensation issued in this docket, we concluded, in the first instance, that:

"...because of the extraordinary level of participation required of both parties and intervenors throughout these proceedings, we find that a reduction in the amount awarded to intervenors based on duplication of effort is unwarranted. . . . The cooperative efforts participated in by the intervenors, ...are essential in building a California consensus." (D.96-08-040, slip op. at 25.)

However, in the second instance, we found it appropriate to apply a nominal reduction for duplication. We determined that

"...workshop participation does not in itself comprise 'extraordinary' participation such that a reduction for duplication would be inappropriate. Working group activities were limited in scope and did not involve the broad-based, multifaceted public dialogue evident in the earlier phases." (D.98-01-007, slip op. at 8.)

As we apply the substantial contribution standard laid out in § 1802(h) in the context of this proceeding, we will evaluate whether the participation was extraordinary and whether the workshop and working group activities performed were limited in scope. We will then determine, in the context of the reasonableness of hours claimed, whether a reduction in hours awarded is warranted because of duplication.

Each of the intervenors has provided information to support its individual assertions of substantial contribution. We will take up these assertions as they relate to each decision in turn.

D.96-03-022 In this Roadmap Decision, the Commission adopted a procedural plan for achieving the transition to a restructured electric services industry, we stated our preference for relying upon stakeholders to make

progress on implementation, and we identified the process for a working group to be recognized by the Commission. The decision was adopted after the receipt of written comments and a full panel hearing. UCAN asserts that it made a substantial contribution to this decision through its comments on customer choice, consumer protection, and unbundling. The decision specifically acknowledges UCAN's comments (and those of TURN and ORA) in adopting a grouping of issues (aggregation, consumer safeguards, and low-income issues with direct access issues) so that the limited resources of intervenors can be maximized.

We agree that UCAN made a substantial contribution to this decision, but its contribution was not unique.

D.96-10-074 In this decision, the Commission directed certain utilities to file authorized ratebase and baserate revenue requirements separating the totals between generation, transmission and distribution; and their estimates of the incremental cost of metering and billing. Comment on other issues relating to metering (i.e., ownership, data access and meter installation) was also invited. UCAN asserts it made a substantial contribution to the Commission's decision to take further comment on metering issues. It supports this assertion by citing its comments, filed on February 20, 1996.⁴ However, these comments do not address the metering issues on which the Commission invites comment. UCAN has failed to demonstrate that it made a substantial contribution to this decision, and

⁴ UCAN incorrectly states that these comments were filed on February 21, 1998.

any contribution it may have made is not readily apparent from a reading of the decision.⁵

D.96-12-077 In this decision, the Commission approved, subject to some limitations, the cost recovery plans submitted by the large electric utilities, and directed the utilities to file certain advice letters to implement the approved plans. This decision was adopted after considering the comments filed on the cost recovery plans.

TURN asserts that it made a substantial contribution to this decision because the Commission adopted recommendations it made in comments on three subjects: 1) not prejudging resolution of other issues not directly related to the cost recovery plans; 2) implementation should ensure that the base revenue increase afforded PG&E did not supplant previously authorized funds; and 3) proposals for specific rate unbundling and disclosure on customer bills should be addressed.

We agree that TURN made a substantial contribution to this decision.

D.96-12-088 In this decision, the Commission updated its earlier roadmap decision (D.96-03-022) largely in light of enactment of Assembly Bill 1890 (Stats. 1996, ch. 854) and the activities of the FERC on the utilities' independent system operator (ISO) application (FERC Docket No. ER96-19-000) and power exchange (PX) application (FERC Docket No. ER96-1663-000). UCAN asserts that it made a substantial contribution to this decision in three ways. First, in its November 26, 1996, comments on the Direct Access Working Group Consumer Protection and Education Report where it claims to have included

⁵ A review of the comments jointly filed by TURN and UCAN on September 13, 1996, summarized in the decision, makes it clear that the recommendations and contentions they raised were not adopted by the Commission.

recommendations or contentions which contributed to the Commission's finding that the Commission should scrutinize the ISO filings at FERC to ensure the independence of the ISO, and to ensure that vertical market power issues are adequately addressed. Second, UCAN asserts it advocated, in its February 20, 1996, comments on the proposed order which became D.96-03-022, that consumer protection and education be in place prior to the transition to direct access. Third, UCAN asserts that it advocated, in the February 20, 1996 comments, that policy issues related to metering and billing be considered on a separate track from the unbundling issue area.

With respect to UCAN's first claim, it is clear that UCAN offered recommendations and contentions to address vertical market power concerns, but we find nowhere in the comments cited by UCAN any recommendation that the Commission scrutinize the ISO and PX filings at FERC. UCAN's second claim, that its February 20, 1996, comments substantially contributed to our finding that consumer protection and education measures must be in place before the transition to direct access, we note that this finding is a restatement of our finding in the Roadmap Decision, and is not an issue newly addressed in D.96-12-088, the Updated Roadmap Decision. (See D.96-12-088, slip op. at 19.) UCAN's third stated ground for its substantial contribution is once again its February 20, 1996, comments, specifically pages 2-3. But these comments do not advocate that the Commission consider metering and billing policy issues on a separate track from unbundling as UCAN would have us read them. We therefore conclude that UCAN has failed to demonstrate that it made a substantial contribution to D.96-12-088.

D.97-02-014 TURN and UCAN each assert that it made a substantial contribution to this decision which addressed public purpose threshold issues. Together with California/Nevada Community Action Association (Cal/Neva)

and Greenlining/Latino Issues Forum (GL/LIF), these parties formed a coalition for their participation in the Low Income Program Working Group, filing joint comments. In D.98-01-007, we previously found four intervenors, including Cal/Neva, had made a substantial contribution to this decision and awarded a total of \$192,875.26 (plus interest) for those contributions.

TURN bases its claim of substantial contribution to this decision on 1) its active participation in two of the working groups whose final products were commended by the Commission in the decision, the Energy Efficiency Program Working Group and the Low Income Program Working Group; and 2) its advocacy in its Reply Comments on the Low-Income Working Group that the most reasonable interpretation of AB 1890's funding language was that no funding cap was mandated for low-income programs, and that increases be subject to the rate limits imposed by AB 1890. We agree with TURN that it made a substantial contribution that was unique in part to D.97-02-014.

UCAN, in demonstrating its substantial contribution to this decision, states that it participated jointly with TURN, GL/LIF and Cal/Neva in their October 24, 1996 comments, and "reference those groups' compensation request to explain how their efforts constituted substantial contribution." (UCAN Request, p. 8.) UCAN does not describe any contention or recommendation it sponsored separately from its joint participation. We agree with UCAN that it made a substantial contribution to D.97-02-014, but we do not find that UCAN's contribution was unique.

D.97-02-021 This decision denied the applications for rehearing of the Preferred Policy Decision, as modified by D.96-01-009. It did modify the Preferred Policy Decision, largely with respect to the Commission's authorization to and encouragement for certain utilities to make submissions to the FERC for the establishment of the ISO and PX. TURN asserts that it made a substantial

contribution to the decision while acknowledging that the Commission denied its application for rehearing. Its substantial contribution claim rests on the Commission's statement in the decision that "although we would tend to agree with TURN concerning this 'double recovery' for past periods, AB 1890 makes this issue moot." (See D.97-02-021, slip op. at 63.) TURN argues that, absent AB 890, there is a "great likeliness" that the Commission would have disposed of this issue in a manner that would have warranted compensation. Further, that it would be unfair to deny compensation where an issue has been rendered moot by subsequent legislative action, as TURN has no control over the legislative process.

To allow legislative action to retroactively nullify a contribution that the Commission would otherwise tend to agree with, adopt, or accept could discourage participation. A policy that would not allow for compensation in such a circumstance could discourage effective and efficient participation whenever there is concurrent legislative interest. Such a policy would conflict with the legislative intent of the intervenor compensation governing statutes. It is clear that in this circumstance, TURN's participation embodied in its application for rehearing was retroactively nullified by AB 1890. It is also clear from a plain reading of D.97-02-021 that the Commission otherwise tended to agree with TURN. We therefore find that TURN has made a substantial contribution to D.97-02-021.

D.97-03-069 This Customer Education Program Decision approved the recommendation of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) to form a joint, statewide customer education program (CEP) to inform the public about the changes taking place in the electric industry, and to provide consumers with the information necessary to allow them to compare and select among

products and services in the electricity market. To assist the Commission in developing an education program, the Commission asked that a working group develop consumer protection guidelines for electric restructuring, including a recommended plan for public outreach and education. This work product, the "Direct Access Working Group Report On Consumer Protection And Education Report In A Restructured Electric Industry In Response To May 17, 1996 Joint Assigned Commissioners' Ruling," was submitted to the Commission on October 30, 1996 (October 30, 1996 DAWG Report). Opening and reply comments to the October 30, 1996, report were filed. The Customer Education Program Decision considered these various filings.

UCAN asserts that its participation in the drafting of the October 30, 1996 DAWG Report and its November 22, 1996, comments on the report, constitutes a substantial contribution to the decision because nine specific findings in the decision "correlate to positions advanced by UCAN" in these two documents. We agree that UCAN made a substantial contribution to D.97-03-069, primarily through its participation in the October 30, 1996 DAWG Report.⁶

D.97-05-039 TURN and UCAN each claim it made a substantial contribution to this Revenue Cycle Services decision.⁷ TURN identified three unique and specific recommendations it made which were adopted by the Commission, at least in part. First, given the predictions of supporter's of

⁶ We come to this conclusion given our familiarity with the October 30, 1996 DAWG Report and note that we found the specific citations to the report, provided by UCAN in its request, to be largely unhelpful. In almost all circumstances, the general subject matter of our decision finding was addressed at the cited location, but the specifics of the finding were not. We caution UCAN to be more comprehensive in future requests. The burden of demonstrating substantial contribution is, after all, on the intervenor.

⁷ "Revenue cycle services" refers to the services and costs related to metering, billing and other information services.

unbundling of revenue cycle services, TURN argued that the Commission should implement such unbundling soon. Second, TURN advocated that unbundling should be adopted consistent with AB 1890. Third, and finally, TURN recommended the Commission maintain a universal uncollectibles pool to avoid redlining. Although not adopted outright, the Commission did agree that TURN's concern was valid, and committed to explore the concern in the direct access proceeding. We agree that TURN made a substantial contribution, one that was unique with respect to the third recommendation.

UCAN rests its claim that it made a substantial contribution to this decision on its December 20, 1996 comments on metering and communications-related issues. It asserts that "[m]ost of UCAN's recommendations were ultimately adopted in a proposed and final decisions (sic) on unbundling." It claims it contributed to five specific Findings of Fact. (See UCAN Request, pp. 5 and 7.) We agree with UCAN that it made a contribution toward three of the specific findings it cites, 5, 6, and 13.

D.97-05-040 TURN and UCAN each claims it made a substantial contribution to our second interim opinion on Direct Access Implementation. TURN states that this decision most directly related to the work of the DAWG, in which it did not actively participate. However, TURN did provide comments on the proposed decision. TURN asserts that it made a substantial contribution since the Commission adopted three of its recommendations, the first two of which were provided independent of other parties. First, TURN asserts that the Commission adopted its views on the disclosure required for aggregation of small consumers' loads. Second, TURN asserts that the Commission agreed with it when it decided to allow utilities to recover a limited amount of the cost of providing certain customer information as a cost of implementing direct access. Third, TURN states that the discussion in the decision of market rules and

affiliate transactions reflects the work TURN engaged in, with a number of other groups, where it asked the Commission to open an investigation. We agree with TURN that it made a unique and substantial contribution to D.97-05-040.

UCAN bases its claim of substantial contribution largely on its comments on the DAWG Reports. Specifically, UCAN asserts that its participation contributed to findings regarding the lack of constraints on customers to elect direct access, concerns about load profiling, the need for meter standards to ensure the interfability of meters, the registration of small customer aggregators, notice requirements, and the adoption of interim affiliate transaction rules. With respect to these assertions of substantial contribution, we agree and find that UCAN made a substantial contribution to D.97-05-040.

D.97-08-108 In this decision, the Commission adopted the recommendations presented in the Energy Division's 3/31/97 report "Consideration of a Nonbypassable Gas Surcharge Mechanism as Ordered in D.97-02-014 (Gas Surcharge Report), with certain clarifications and additions. The Commission also denied Southern California Gas Company's petition for modification of D.97-02-014. TURN asserts that it made a substantial contribution to this decision that is apparent on the face of the document. We agree. As the decision notes, TURN participated in the workshop that lead to the Energy Division's Report, and filed comments on that report. TURN made two specific contributions. First, TURN, among others, advocated that we seek state legislation to achieve a truly nonbypassable gas surcharge mechanism, an approach we adopted. Second, we also agreed with PG&E and TURN that wholesale and UEG customers should be exempt from the nonbypassable gas surcharge only to the extent that customers of these entities will be subject to their own nonbypassable public purpose program surcharge. We find that

TURN made a substantial contribution to D.97-06-103, though its contribution was not unique.

Supplemental Comments of the CPUC in Docket Number ER96-1663-000, August 14, 1996 In this formal filing before the FERC, the Commission laid out its views on the ISO and PX applications filed by California's large electric utilities. These comments were developed after soliciting and receiving written comments from parties to our electric restructuring docket. The comments were prepared by the Commission's staff and approved for filing with FERC by the Commission after discussion in Executive Session of a regularly noticed Commission Meeting. UCAN cites eight arguments it made in its comments to the Commission which it asserts the Commission then incorporated into the August 14 comments, demonstrating a substantial contribution.

Both the Commission's Office of Ratepayer Advocates (ORA) and Edison object to UCAN seeking compensation for a substantial contribution to this pleading. We address their arguments when we consider whether the hours UCAN and TURN claim associated with this subject area are reasonable. We agree that UCAN made a substantial contribution to the August 14 comments through the comments it filed on May 30, 1996, but we do not find its contribution unique. After reviewing the comments TURN filed at this Commission on May 30, 1996, and the comments we filed at FERC, we find that TURN also made a substantial, though not unique contribution to the August 14 comments.

5. Reasonableness of the Requests for Compensation

Once we establish that an intervenor is eligible for compensation and has made a substantial contribution, we evaluate the reasonableness of the intervenor's request. The three requests present some common reasonableness issues which warrant general discussion before getting to the specifics of each

request: duplication of effort, separate but related proceedings, preparation of the compensation requests, reasonable hourly rates, and ISO and PX working groups. Because we relied heavily on the working group process to reach the decisions to which the parties made a substantial contribution, we will continue to look liberally on hours devoted to them, and to related research, drafting comments, reviewing the comments of other parties, meetings between persons within the intervenor organizations, meetings and phone calls between personnel of different parties, and ad hoc, multi-party meetings. (See D.96-08-040, slip op. at 28.)

5.1 Duplication

In a multi-party proceeding such as this, part of the reasonableness assessment involves evaluating whether an intervenor's participation duplicates the participation of similar interests otherwise adequately represented; or whether participation from similar interests materially supplements, complements, or contributes to the presentation of another party; or whether the intervenor's participation was unique. (See §§ 1801.3(f) (and discussion of it in D.98-04-059, slip op. at 49) and 1802.5.)

The consensus building process we have relied upon during the implementation of our Preferred Policy Decision, when most successful, is characterized by the development of compatible goals and cooperative proposals for the Commission's consideration. Duplication of participation under such circumstances would hardly be surprising, nor is it irreconcilable with the substantial contribution standard for intervenor compensation.

Unlike the activities awarded compensation in D.96-08-040, we find that the workshop and working group participation that took place during the time period covered by these requests does not in itself comprise "extraordinary" participation such that a reduction for duplication would be inappropriate.

Working group and workshop activities were limited in scope and did not involve the broad-based, multifaceted public dialogue evident in the earlier phases. Therefore, a nominal reduction for duplication may be in order where organizations participated as coalition members or contributed nothing unique to the process.

5.2 Separate Proceedings

We will also reduce the hours requested when we find that they relate to a separate proceeding. For purposes of compensation in this docket, only those hours reasonably incurred and associated with a substantial contribution to a decision issued in this docket may be compensable, with the exception of those WEPEX activities described below. A number of topics were taken up by the Commission in this rulemaking docket and then later pursued on a utility-specific basis through an application (i.e., unbundling) or in a more tailored rulemaking (i.e., affiliate rules). Only those hours spent on the topic while it was being addressed in this docket are compensable in this docket.

5.3 Preparation of the Compensation Requests

It is our practice to reduce the hourly rate awarded for preparation of the intervenor compensation request. We have held that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare. (See D.98-04-059, slip op. at 51.) We have applied the full hourly rate in complex cases involving legal and technical analysis deserving of compensation at higher rates. The effort, in terms of complexity and legal argument content, involved in the preparation of the instant requests warrants compensation at the full hourly rate.

5.4 Reasonable Hourly Rates

Computation of compensation must take into consideration the market rates paid to persons of comparable training and experience who offer

similar services. (§ 1806.) In no case may the compensation awarded exceed the rate paid for comparable services by the Commission or the public utility, whichever is greater. (Id.) Even when compensation is warranted and approved, the fees awarded for the work of a customer's advocates and expert witnesses are limited to those which are "reasonable." (§ 1802 (a).) "Reasonable" implies not only that the rate charged by the advocate is justified based on the rates earned by others in the field with similar experience and skill, but also that the level of expertise of the advocate or expert is appropriate for the task performed. The burden of proof in a compensation request lies with the party seeking compensation. (See D.94-09-059). In the absence of carrying that burden, the Commission may set a rate. (D.96-05-053, slip op. at 5.)

In the following sections, we establish appropriate rates for the attorneys, expert witnesses, and staff members of the intervenors requesting compensation in this proceeding. Wherever possible, we use rates previously approved by this Commission for the work of these individuals. In previous decisions, we have found the annual survey of law firms, published in the periodical, *Of Counsel* to be instructive in the setting of appropriate rates for attorneys practicing before this Commission. (D.87-10-078, slip op. at 35, n8.) In 1996, *Of Counsel* surveyed San Francisco firms and published the billing rates of 10 of the firms.⁸ From this data, we extract the following conclusions, to which we refer in the following sections:

⁸ 1996 Annual Survey of the Nation's Largest Law firms, 15 *Of Counsel* 11, 12, June 3, 1996 at 64 [hereinafter *Of Counsel Survey*].

<u>Average Billing Rate</u>	<u>1995</u>
"High" Partners	\$337
"Low" Partners	\$212
All Partners	\$275
"High" Associates	\$211
"Low" Associates	\$115
All Associates	\$163

5.5 ISO and PX Working Group

ORA and Edison each filed responses to UCAN's request for compensation. UCAN and TURN filed replies to these responses. ORA's response raises two concerns. First, ORA asks the Commission to consider whether working group and advisory group participation is properly compensable under the intervenor compensation statutes. ORA cites the lack of a record on which to determine whether a substantial contribution was made, and, if so, whether it was unique or duplicative. Second, ORA argues that UCAN's effort regarding the proposed ISO/PX (or WEPX) filings to the FERC is outside the scope of compensable intervenor participation. Edison's response also raises this second argument, pointing out that the determination of ISO and PX issues will be made in FERC proceedings, and not Commission proceedings. (See 1802(f) for a definition of "proceeding" as that term is used in the governing statutes.)

ORA's first argument was taken up and addressed by the Commission in both the decision issued in our Intervenor Compensation Rulemaking, D.98-04-059, specifically, pages 39-41 and 44-45, and in D.98-01-007, pages 5-8, issued in this docket, which addressed the compensation requests of other parties seeking compensation for working group activities. We found

intervenors involved in working group activities, where the group was characterized by open, rather than limited membership, and participants were not authorized by the Commission to claim a per diem, were eligible for compensation under the intervenor compensation statutes.

We have yet to address the compensability of post-Preferred Policy Decision ISO and PX working group activities (also referred to as WEPEX (the Western Power Exchange) activities). We did note in D.96-08-040, footnote 43, that compensation for travel expenses, and presumably actual participation, *may* be available to WEPEX participants. TURN argues that participation in the WEPEX process was to assist in the implementation of the Commission's Preferred Policy Decision by helping to prepare the required proposal to FERC on a consensus basis. TURN states that in this request it seeks compensation for its working group participation that resulted in the preparation of the ISO and PX Phase II filings, and not for its participation in the FERC proceedings. TURN points out that the circumstances here are unique because the Commission invited the parties to the restructuring proceeding to file comments with it to assist the Commission in responding to the FERC filing that the utilities had made. Similarly, UCAN asserts that it only requests compensation for ISO/PX work relating to input given to the Commission. Unlike TURN, it argues that the Commission's August 14, 1996, filing before FERC constitutes an "order or decision" for purposes of §1802(h). UCAN's argument calls for an interpretation of § 1802(h) that is less broad than TURN's interpretation.

We agree with TURN that the WEPEX working group presents a unique set of circumstances (relative to the other electric restructuring working groups), but we do not agree that this set of circumstances allows for the broad interpretation of the statute necessary to arrive at TURN's result. Neither TURN nor UCAN demonstrate a substantial contribution to a "decision," as that term

has traditionally been applied in evaluating intervenor compensation requests under the governing statutes, resulting from its participation in the WEPEX working group. As ORA and Edison allude, this Commission is not the decision making body on the implementation of the ISO and PX endorsed in the Preferred Policy Decision. The Commission clearly stated the same in August, 1996, when it established the Trust Advisory Committees and addressed interim funding for the yet-to-be-approved ISO and PX:

"Although we will be advocates of California's interests before FERC, decisions concerning the rates, practices, and potential services of the ISO and PX will be made by FERC and are expected after 1998 to affect practices and services now provided by Applicants. Applicants' interaction with the ISO and PX will also involve FERC decisionmaking. We expect to influence those FERC decisions about potential new services in the future; however, in the meantime, we have a concurrent role - to shepherd the collaborative work of the industry in preparing for restructuring." (See D.96-08-038, A.96-07-001.)

We made it clear then that we were a party to the FERC proceedings wherein ISO and PX final policy and implementation details were being established. However, in our role of shepherd, we solicited and received comments from parties in this docket on the ISO and PX applications filed by the utilities before FERC. These comments were relied upon by the Commission in preparing its August 14 comments to FERC. We agree with UCAN and, for purposes of evaluating the compensability of WEPEX working group activities, regard our August 14, 1996, comments to FERC as an "order or decision" under § 1802(h).

TURN's interpretation of § 1802(h) strays too far from a plain reading of the statute. It would have the Commission compensate participation occurring after August 14, 1996, without any link to a future Commission product against which substantial contribution could be evaluated. That being

said, we do not rule out the possibility that such a product exists or may come to exist in the future. Therefore, we will deny without prejudice compensation requested for ISO, PX, and WEPEX activities which occurred after our August 14, 1996, filing to FERC.

6. TURN's Requested Compensation

TURN requests compensation in the amount of \$315,973 as follows:

Attorney and Expert Costs

Robert Finkelstein			
308.75 hrs.	x	\$220/hr. (1996 rate)	\$ 67,925
87.00 hrs.	x	\$235/hr. (1997 rate)	\$ 20,445
Michel P. Florio			
54.50 hrs.	x	\$260/hr. (fiscal 1995-96)	\$ 14,170
366.75 hrs.	x	\$275/hr. (fiscal 1996-97)	\$100,856
Eugene P. Coyle			
181.75 hrs.	x	\$125/hr. (1996 rate)	<u>\$ 22,719</u>
		subtotal	\$226,115

Consultant Fees and Expenses

JBS ENERGY, INC.

William Marcus			
31.25 hrs.	x	\$140/hr.	\$ 4,375
Jeff Nahigian			
136.50 hrs.	x	\$80/hr.	\$ 10,920
Greg Ruzovan			
3.25 hrs.	x	\$80/hr.	\$ 260
JBS Expenses			<u>\$ 883</u>
		subtotal	\$ 16,438

STRATEGY INTEGRATION, INC.

Eric Woychik			
384.00 hrs.	x	\$145/hr.	\$ 55,680
Strategy Integration Expenses			<u>\$ 350</u>
		subtotal	\$ 56,030

Other Costs

Photocopying	\$ 10,206
Postage	\$ 4,328
FedEx	\$ 93

Fax charges	\$ 1,110
Phone	\$ 375
Travel Expenses	\$ 1,209
Research (LEXIS)	\$ 69
subtotal	\$ 17,390
TOTAL	\$315,973

6.1 Reasonableness of Hours Claimed by TURN

TURN allocates the claimed hours of each of its staff and consultant Strategy Integration among twelve categories: DAWG, for Direct Access Working Group involvement and participation in other direct access issues; LIWG, for Low Income Working Group involvement and participation on low income issues generally; Public Purpose, for the time TURN devoted to energy efficiency issues, including the Energy Efficiency Working Group; Unbundling, for unbundling and ratesetting issues addressed in this docket separate from the utility-specific applications; CTC, for efforts regarding competitive transition charge issues addressed prior to the utility-specific applications; WEPEX, for Steering Committee work; TAC, for PX Trust Advisory Committee meetings and related preparation; RH, for hours devoted to preparing an application for rehearing of the Preferred Policy Decision and a related subsequent application for rehearing; CRP, for time spent on the utilities' cost recovery plans and the related decision; Roadmap, for work related to the Commission's roadmap decisions; General, for general participation work unallocable to one of the categories listed above; Compensation, for time spent preparing the compensation request; and Travel, for time spent in travel related to the proceeding. TURN also provides a detailed breakdown of the hours each staff member and its consultant, Strategy Integration, Inc. devoted to this proceeding. TURN describes the tasks its consultant, JBS Energy, Inc., billed TURN for, which were focussed on the ratesetting and unbundling topics addressed in this

proceeding. The total hours for which TURN seeks compensation represent all of the hours it expended in the electric restructuring proceeding from January 1, 1996 through April 30, 1997.

TURN's allocation of hours complies with our requirements. With the exception of WEPEX and Trust Advisory Committee efforts expended after August 14, 1996, and one other WEPEX-related entry, the hours expended are reasonable for the effort involved given the complexity of the subject matter and the substantial contributions, largely unique, described above. We will not compensate TURN for the preparation of its FERC intervention for that activity is not compensable under the statute. (See § 1802(f) and (h).) We deny without prejudice the following hours from the time claimed by TURN for its staff and consultants:

Name	Date(s)	Hours	Activity
Finkelstein	10/21/96	0.50	WEPEX Conf Call
Florio	11/7-14/96	14.50	TAC
	11/15, 18/96	12.00	TAC
	11/19-12/5/96	19.50	TAC and WEPEX
	12/11-30/96	31.75	TAC and WEPEX
	1/2/97	11.50	TAC
	1/4, 6/97	6.0	WEPEX
	1/7-17/97	35.0	TAC and WEPEX
	1/21-2/20/97	102.50	TAC and WEPEX
	2/23-3/11/97	50.00	WEPEX
	3/12-13/97	6.75	WEPEX
	3/13-17/97	9.75	TAC and WEPEX
	3/18-4/4/97	19.50	TAC and WEPEX
	4/21-30/97	16.25	TAC and WEPEX
Woychik	12/2/96-4/26/97	384.00	TAC and WEPEX

TURN is welcome to submit a request for compensation for the WEPEX and TAC hours listed above along with a substantial contribution argument consistent with our interpretation of § 1802(h) discussed above.

Although TURN describes the tasks its consultant, JBS Energy, Inc., billed TURN for, TURN neglects to provide a detailed breakdown of the JBS Energy hours expended. Our first compensation decision in this docket addressed such a deficiency in another party's request. (See D.96-08-040, slip op. at 60.) As we stated then, although § 1802(c) defines expert fees as "recorded or billed costs," compensation is limited to those which are "reasonable." (§ 1802(a).) To assess reasonableness, we must have a detailed description of services and expenditures so that we can know whether the specific task performed is compensable. In that instance, we reduced by 15% the significant number of hours claimed on behalf of one consultant, and, given the small number of hours claimed but not documented by another consultant, applied no deduction. We have also completely denied compensation for undocumented consultant hours. (See, e.g., D.98-08-027, slip op. at 12.)

In this instance, the claimed hours insufficiently documented (including expenses) total \$16,438, or about 5% of TURN's total request. From TURN's request, it appears that the lion's share of these costs are attributable to JBS Energy's work on rate unbundling issues, including attending the Ratesetting Working Group Meetings as TURN's representative. Given TURN's substantial contribution described above, and the relatively small amount of dollars arising from the insufficiently documented hours, we will merely caution TURN that a detailed listing of hours by task as well as issue should be presented in all future requests for compensation.

6.2 Reasonableness of Hourly Rates Applied by TURN

The hourly rates requested by TURN for its advocates and consultants have, with one exception, all been approved in prior decisions.⁹ Since similar services were performed by these advocates and consultants, it is reasonable to apply the previously adopted rates here. The one exception is the hourly rate increase TURN seeks for Mr. Woychik. Since we have denied without prejudice all of the hours TURN claims regarding compensation for Mr. Woychik, we will not address the reasonableness of his hourly rate.

6.3 Reasonableness of TURN's Other Costs

Given the large number of parties on the service list, and the numerous working group meetings attended by TURN, we find the other costs TURN claims on behalf of itself and JBS Energy reasonable. Since we have denied without prejudice all of the hours TURN claims regarding compensation for Mr. Woychik, we will not address the reasonableness of his related expenses.

6.4 Award to TURN

TURN is awarded \$167,158 for its substantial contributions in this docket, described above, for participation occurring from January 1, 1996, through April 30, 1997.

⁹ See D.97-02-048 for Mr. Finkelstein's 1996 rate of \$220 and D.98-03-065 for his 1997 rate of \$235; D.96-06-020 for Mr. Florio's FY 1995 rate of \$260, and D.97-12-076 for his FY 1996 rate of \$275; D.96-04-080 for Mr. Coyle's rate of \$125; and D.97-05-070 for the JBS Energy staff rates of \$140 for Mr. Marcus, \$80 for Mr. Nahigian, and \$80 for Mr. Ruszovan.

Attorney and Expert Costs

Robert Finkelstein			
305.75 hrs.	x	\$220/hr. (1996 rate)	\$ 67,265
87.00 hrs.	x	\$235/hr. (1997 rate)	\$ 20,445
Michel P. Florio			
54.50 hrs.	x	\$260/hr. (fiscal 1995-96)	\$ 14,170
31.75 hrs.	x	\$275/hr. (fiscal 1996-97)	\$ 8,731
Eugene P. Coyle			
181.75 hrs.	x	\$125/hr. (1996 rate)	<u>\$ 22,719</u>
		subtotal	<u>\$133,330</u>

Consultant Fees and Expenses

JBS ENERGY, INC.

William Marcus

31.25 hrs.	x	\$140/hr.	\$ 4,375
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Jeff Nahigian

136.50 hrs.	x	\$80/hr.	\$ 10,920
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Greg Ruzsovan

3.25 hrs.	x	\$80/hr.	\$ 260
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JBS Expenses

\$ 883

subtotal

\$ 16,438

Other Costs

Photocopying

\$ 10,206

Postage

\$ 4,328

FedEx

\$ 93

Fax charges

\$ 1,110

Phone

\$ 375

Travel Expenses

\$ 1,209

Research (LEXIS)

\$ 69

subtotal

\$ 17,390

TOTAL

\$167,158

7. UCAN's Requested Compensation

UCAN requests compensation in the amount of \$347,604.26 as follows:

Attorney Costs

Michael Shames			
801.1 hours	x	\$180.00	\$144,198.00
		subtotal	\$144,198.00

Consultant Fees and Expenses

Eric Woychik (\$145/hour)

DAWG issues	\$ 81,983.00
ISO/PX issues	\$100,920.00

Expenses

DAWG issues	\$ 756.62
ISO/PX issues	\$ 3,306.37

subtotal	\$186,965.99
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Other costs

Photocopying	(89,376 pages X \$.05/page)	\$ 4,468.80
Postage		\$ 7,001.23
Delivery Costs		\$ 144.00
Phone		\$ 419.92
Travel		\$ 4,406.32

costs subtotal	\$ 16,440.27
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TOTAL	\$347,604.26
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7.1 Reasonableness of Hours Claimed by UCAN

UCAN allocates its claimed hours for its attorney and consultant, Strategy Integration, among five categories: consumer education, consumer protection, direct access, WEPEX or ISO/PX, and miscellaneous. In the miscellaneous category, UCAN includes preliminary work on public purpose and low income issues, which UCAN discontinued participating in after it became clear that TURN and California-Nevada would actively participate on those issues while UCAN covered the direct access issues; minimal work on CTC and unbundling issues; work on initiating an affiliate rules inquiry; and time devoted to preparing the request for compensation. UCAN also submitted daily

time records for its attorney and consultant detailing the activities undertaken within each category. The total hours for which UCAN seeks compensation represent all of the hours it expended during the pendency of this portion of the electric restructuring proceeding, from January 1, 1996 through May 31, 1997.

UCAN's allocation of hours complies with our requirements.

However, we can not compensate UCAN in this docket for its preparation for and participation in the unbundling applications filed by PG&E, SDG&E, and Edison on December 6, 1996. (See § 1804.) Any requests for compensation for substantial contributions to decisions or orders issued in those dockets should be tendered in those dockets. We deny without prejudice UCAN's request for compensation regarding unbundling when the related activity occurred after December 6, 1996. Specifically, we deny without prejudice the following hours:

<u>Name</u>	<u>Date(s)</u>	<u>Hours</u>	<u>Unbundling Activity</u>
Shames	12/13/96	3.0	Mtg
	12/19/96	2.1	Filing and comments
	2/20/96	5.7	Comments
	12/23/96	0.4	Motion for late filing
	12/24/96	2.2	Review unbundling filings
	1/2/96	1.2	Mtg and review ALJ Ruling on PHC and hearing
	1/14/97	5.2	Prepare for hearing and travel
	1/15/97	10.8	Attend hearing and travel
Woychik	12/13/96	3.0	Mtg
	1/3/97	4.4	Prepare PHC
	1/14/97	8.4	Attend PHC, prepare comment
	1/15/97	8.2	Attend hearing & provide comments

2/3/97	3.4	Define issues, prepare testimony
2/11/97	3.9	Develop issues for testimony
2/24/97	3.4	Develop testimony
2/25/97	6.4	Develop final testimony
4/2/97	2.4	Read & assess testimony & rebuttal
4/4/97	2.6	Cross-exam, testimony & conference
4/8/97	3.2	Testify on unbundling

Although UCAN asserts that it only requests compensation for ISO/PX work relating to input given to the Commission, and demonstrates its substantial contribution on this issue based on our August 14, 1996, comments to FERC, it includes in its request hours spent on the WEPEX or ISO/PX work through January 14, 1997. We deny without prejudice the hours UCAN claimed for WEPEX or ISO/PX work after August 14, 1996, specifically, the 174.4 hours claimed for Mr. Woychik of Strategy Integration in 36 entries dated August 19, 1996 through January 8, 1997.

UCAN's Mr. Shames' detailed time record includes careful documentation of time spent in travel, and compensation at one-half the otherwise applicable hourly rate for that time is requested, consistent with our policy. (See D.98-04-059, slip op. at 52.) However, the time spent in travel by UCAN's consultant, Mr. Woychik, is bundled into the time he records in a particular category of activity, and UCAN is silent as to what rate is applied to Mr. Woychik's travel time in its request. The relative number of hours that *may* be requested improperly at the full rate appear to be small. We will not reduce

UCAN's award but rather caution it to include a statement as to how the time in travel of its consultant(s) is recorded and the hourly rate UCAN applies to travel time.

As discussed above when evaluating UCAN's substantial contribution, we find that UCAN failed to demonstrate that it made a substantial contribution to two of the eight decisions or orders it described in its request. When we found a substantial contribution was made, UCAN's contribution was not unique, but was rather duplicative or in conjunction with other parties, in three instances, and was largely unique in the remaining three. Because of this duplication and failure to demonstrate a substantial contribution in some instances, we will reduce UCAN's otherwise reasonable hours and expenses by 20%.

7.2 Reasonableness of Hourly Rates Applied by UCAN

The hourly rate requested by UCAN for its attorney, Mr. Shames, has been previously approved in D.96-08-040 for work performed in 1996. UCAN asks that the same rate apply to the "residual work" Mr. Shames performed in 1997. Since similar services were performed by Mr. Shames when the \$180 rate was approved, it is reasonable to apply that rate here. UCAN seeks a 7% increase in the hourly rate previously approved for Mr. Woychik, from \$135 to \$145. (See D.96-08-040.) In justification of the increase, UCAN merely states that the increase reflects the highly technical work done by Mr. Woychik in the direct access workshops (presumably relative to the services he performed when granted the \$135 rate). UCAN provides no information on Mr. Woychik's training and experience, and no information on how the rate it requests compares to the market rate paid to persons of comparable training and experience who offer similar services. (See § 1806.) This deficiency is especially egregious since when we last considered a request from UCAN in this docket UCAN had to

supplement its showing to justify the rate it requested for Mr. Woychik. Such a lack of a showing would usually result in our denying the requested hourly rate increase. However, TURN's request includes the showing necessary for us to evaluate the reasonableness of increasing Mr. Woychik's hourly rate.

Mr. Woychik's training and experience include an M.A. in economics from New Mexico State University, and seventeen years of employment in the field of energy policy and utility regulation, first at the California Energy Commission, and then as a staff Analyst and Commissioner Advisor at this Commission, before serving as a private consultant for the last eight of the seventeen years. TURN provides a careful survey of the rates paid to consultants providing services similar to those Mr. Woychik provided UCAN. TURN's survey reveals rates paid by various parties in 1995 and 1996 to consultants for testimony in complex energy proceedings before this Commission in the range of \$190 to \$240. TURN reminds the Commission that it awarded compensation in this docket for work performed by energy consultants in 1995 at the hourly rate of \$100 to \$175. (See D.96-08-040.) We agree with TURN that increasing Mr. Woychik's hourly rate to \$145 is reasonable given his training and experience, and the market rates paid to comparably trained and experienced consultants providing similar services.

7.3 Reasonableness of UCAN's Other Costs

UCAN's other costs appear reasonable, with a few exceptions, given the numerous working group meetings it attended, the large number of parties on the service list, and the fact that UCAN is located in San Diego, necessitating more travel costs. First, we deny without prejudice those expenses related to unbundling and WEPEX or ISO/PX activities where the hours claimed for the

underlying activity were denied without prejudice.¹⁹ As we stated when we last considered a UCAN request for compensation in this docket, we approve half time for travel hours, but we do not award travel costs (i.e. airfare, meals, hotel) related to meetings not sponsored by the Commission. (D.96-08-040, slip op. at 62.) We also do not allow hotel and per diem (i.e. meals) expenses for one-day meetings held in California. (Id. at 66 and D.95-03-007, slip op. at 10.) We therefore will not award UCAN the travel costs it claims for 5 meetings attended by Mr. Shames and for 8 expense entries claimed by Mr. Woychik. We also reduce the van, taxi, and parking claimed by Mr. Shames. Since UCAN's request does not provide details, such as dates, with these expenses, and approximately 30% of the travel entries are not reasonable, we will reduce the van, taxi, and parking expenses by 30% to arrive at a reasonable level of expenses.

7.4 Award to UCAN

UCAN is awarded \$212,761 for its substantial contributions in this docket, described above, for participation occurring from January 1, 1996 through April 30, 1997.

Attorney Costs	hours		hourly rate (1996-97)		
Michael Shames					
	770.2	x	\$180.00	\$138,636.00	
subtotal					\$138,636.00
Consultant Fees and Expenses					
Fees					
Eric Woychik					
DAWG issues	501.1	x	\$145.00	\$ 72,659.50	

¹⁹ Specifically, we deny without prejudice UCAN's request for \$168 for travel related to unbundling on 1/14-15/97; and the \$665.86 in expenses Strategy Integration claims in 4 entries dated 9/4/96-12/23/96.

R.94-04-031, I.94-04-032 ALJ/BAR/mrj**'

ISO/PX issues	513.2	x	\$145.00	\$74,414.00	
subtotal					\$147,074
Expenses					
DAWG issues				\$ 623.75	
ISO/PX issues				<u>\$ 2,440.66</u>	
subtotal					\$ 3,064
Other costs					
Photocopying				\$4,468.80	
Postage				\$7,001.23	
Phone				\$ 419.92	
Overnight				\$ 144.00	
Delivery					
Travel				<u>\$3,135.82</u>	
subtotal					\$ 15,170
Otherwise					\$303,944
Reasonable					
Less 20%					\$ 60,789
TOTAL AWARD					\$243,155

8. Summary of Awards

In summary, we award compensation to UCAN and TURN for their substantial contributions in this proceeding during the time period January 1, 1996 through April 30, 1997, as follows:

<u>Intervenor</u>	<u>Amount Requested</u>	<u>Amount Awarded</u>
TURN	\$ 315,973	\$167,158
UCAN	\$ 347,604.26	\$243,155
Total	\$ 663,577.26	\$379,919

We will assess responsibility for payment of the awarded amounts among the electric utilities per the method applied previously in this docket in D.96-04-080 and D.98-01-007. PG&E, Edison, and SDG&E shall each pay a portion of the awarded amounts based upon their respective 1996 retail sales of electricity measured in kilowatt-hours.

Consistent with previous Commission decisions, we will order that interest be paid on the awarded amounts (calculated at the three-month commercial paper rate), commencing August 13, 1997, for UCAN and September 20, 1997, for TURN, (the 75th day after each party filed its compensation request) and continuing until each utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN and UCAN on notice that the Commission Energy Division may audit records related to this award. Thus, these organizations must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records should identify specific issues for which the party 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 and UCAN have each made a timely request for compensation.
2. TURN and UCAN have previously been determined to be eligible for awards of compensation in this proceeding.
3. To allow legislative action to retroactively nullify a contribution that the Commission would otherwise tend to agree with, adopt, or accept could discourage participation, contrary to § 1801.3(b).
4. TURN contributed substantially to D.96-12-077, D.97-02-014, D.97-02-021, D.97-05-039, D.97-05-040, D.97-06-108, and the Supplemental Comments of the CPUC in FERC Docket Number ER96-1663-000, August 14, 1996.
5. UCAN contributed substantially to D.96-03-022, D.97-02-014, D.97-03-069, D.97-05-039, D.97-05-040, and the Supplemental Comments of the CPUC in FERC Docket Number ER96-1663-000, August 14, 1996.

6. TURN's interpretation of § 1802(h) strays too far from a plain reading of the statute because it would have the Commission compensating participation without any demonstration of a substantial contribution to a future Commission order or decision.

7. With the exception of WEPEX and Trust Advisory Committee efforts expended after August 14, 1996, and one other WEPEX-related entry, the hours expended by, and on behalf of, TURN are reasonable for the effort involved given the complexity of the subject matter and the largely unique substantial contributions it made.

8. It is reasonable to apply the hourly rates requested by TURN for its advocates and consultants that have been approved in prior decisions since the services performed here are similar.

9. The other costs claimed by TURN for itself and its consultant, JBS Energy, Inc., are reasonable.

10. We deny without prejudice the following hours from the time claimed by TURN for its staff and consultants:

Name	Date(s)	Hours	Activity
Finkelstein	10/21/96	0.50	WEPEX Conf Call
Florio	11/7-14/96	14.50	TAC
	11/15, 18/96	12.00	TAC
	11/19-12/5/96	19.50	TAC and WEPEX
	12/11-30/96	31.75	TAC and WEPEX
	1/2/97	11.50	TAC
	1/4, 6/97	6.0	WEPEX
	1/7-17/97	35.0	TAC and WEPEX
	1/21-2/20/97	102.50	TAC and WEPEX
	2/23-3/11/97	50.00	WEPEX
	3/12-13/97	6.75	WEPEX
	3/13-17/97	9.75	TAC and WEPEX
	3/18-4/4/97	19.50	TAC and WEPEX
	4/21-30/97	16.25	TAC and WEPEX
Woychik	12/2/96-4/26/97	384.00	TAC and WEPEX

11. We deny without prejudice UCAN's request for compensation regarding unbundling when the related activity occurred after December 6, 1996.

Specifically, we deny without prejudice the following hours:

<u>Name</u>	<u>Date(s)</u>	<u>Hours</u>	<u>Unbundling Activity</u>
Shames	12/13/96	3.0	Mtg
	12/19/96	2.1	Filing and comments
	12/20/96	5.7	Comments
	12/23/96	0.4	Motion for late filing
	12/24/96	2.2	Review unbundling filings
	1/2/96	1.2	Mtg and review ALJ Ruling on PHC and hearing
	1/14/97	5.2	Prepare for hearing and travel
	1/15/97	10.8	Attend hearing and travel
Woychik	12/13/96	3.0	Mtg
	1/3/97	4.4	Prepare PHC
	1/14/97	8.4	Attend PHC, prepare comment
	1/15/97	8.2	Attend hearing & provide comments
	2/3/97	3.4	Define issues, prepare testimony
	2/11/97	3.9	Develop issues for testimony
	2/24/97	3.4	Develop testimony
	2/25/97	6.4	Develop final testimony
	4/2/97	2.4	Read & assess testimony & rebuttal
	4/4/97	2.6	Cross-exam, testimony & conference
	4/8/97	3.2	Testify on unbundling

12. We deny without prejudice the hours UCAN claimed for WEPEX or ISO/PX work after August 14, 1996, specifically, the 174.4 hours claimed for Mr. Woychik of Strategy Integration in 36 entries dated August 19, 1996 through January 8, 1997.

13. Due to duplication of contribution and failure to demonstrate a substantial contribution to D.96-10-074 and D.96-12-088, the award to UCAN for otherwise reasonable hours and expenses should be reduced by 20%.

14. It is reasonable to apply the hourly rate requested by UCAN for its attorney, Mr. Shames that has been approved in prior decisions since the services performed here are similar.

15. It is reasonable to increase the \$135 hourly rate previously applied to the work performed by Mr. Woychik of Strategy Integration, Inc. to \$145 for work performed in 1996 and 1997 given his training and experience, and the market rates paid to comparably trained and experienced consultants providing similar services.

16. We deny without prejudice the following expenses related to unbundling and WEPEX or ISO/PX activities where the hours claimed for the underlying activity were denied without prejudice: UCAN's request for \$168 for travel related to unbundling on 1/14-15/97; and the \$665.86 in expenses UCAN claims on behalf of Strategy Integration in 4 entries dated 9/4/96-12/23/96.

17. Because we do not award travel costs related to meetings not sponsored by the Commission, and we do not allow hotel and per diem expenses for one-day meetings held in California, we will reduce the amount we award UCAN for its other costs.

18. Allocation of payment of the approved awards between PG&E, Edison, and SDG&E based on the number of retail kilowatt-hours of electricity sold by each of them in 1996 is reasonable.

19. Awards of compensation should earn interest beginning on the 75th day after the date of the filing of a completed request for compensation.

Conclusions of Law

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

2. For purposes of evaluating the compensability of WEPEX working group activities, we conclude that our August 14, 1996, comments to FERC constitute an "order or decision" as those terms are used in § 1802(h).

3. TURN should be awarded \$167,158 for its substantial contributions, detailed above, and covering all of its costs of participation in this docket from January 1, 1996 through April 30, 1997, with the exception of participation occurring after August 14, 1996, on the subjects of WEPEX and TAC.

4. UCAN should be awarded \$243,155 for its substantial contributions, detailed above, and covering all of its costs of participation in this docket from January 1, 1996 through April 30, 1997, with the exception of participation occurring after August 14, 1996, on the subjects of WEPEX or ISO/PX, and participation occurring after December 12, 1996, on the subject of unbundling.

5. PG&E, Edison, and SDG&E should pay to each intervenor that pro rata portion of each intervenor's award based upon each utility's respective 1996 retail kilowatt-hours of electricity sold in 1996.

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

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$ 167,158 in compensation for its substantial contribution to Decision (D.) 96-12-077, D.97-02-014, D.97-02-021, D.97-05-039, D.97-05-040, D.97-06-108 and the Supplemental Comments of the CPUC in FERC Docket Number ER96-1663-000, August 14, 1996.

2. Utility Consumers' Action Network (UCAN) is awarded \$ 243,155 in compensation for its substantial contribution to D.96-03-022, D.97-02-014,

R.94-04-031, I.94-04-032 ALJ/BAR/mrj *

D.97-03-069, D.97-05-039, D.97-05-040, and the Supplemental Comments of the CPUC in FERC Docket Number ER96-1663-000, August 14, 1996.

3. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay to TURN and UCAN that pro rata portion of each intervenor's award based upon each utility's respective 1996 retail kilowatt-hours of electricity sold in 1996 within 30 days of the effective date of this order. PG&E, Edison, and SDG&E 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, beginning August 13, 1997, for UCAN, and September 30, 1997, for TURN, and continuing until full payment is made.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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