

Decision 98-12-058 December 17, 1998

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

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation With and Into B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub"), the Wholly Owned Subsidiaries of a Newly Created Holding Company, Mineral Energy Company.

**ORIGINAL**

Application 96-10-038  
(Filed October 30, 1996)

**OPINION AWARDING COMPENSATION**

This decision grants compensation for substantial contributions to Decision (D.) 98-03-073 to the following intervenors: the Greenlining Institute and the Latino Issues Forum (Greenlining/LIF), a combined award of \$20,469.43; The Utility Reform Network (TURN), \$215,142.29; Utility Consumers Action Network (UCAN), \$79,266.42.

**1. Background**

D.98-03-073 approves the merger of applicants Pacific Enterprises, the holding company owner of the Southern California Gas Company (SoCalGas), and Enova Corporation, the holding company owner of San Diego Gas & Electric Company (SDG&E), subject to a number of conditions enumerated in the decision. Among other things, we determined that savings from the merger are \$288 million to be computed over five years and distributed to ratepayers and

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

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

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

We conduct a review consistent with the statutory requirements every time we must decide a request for intervenor compensation. In this proceeding, where the initial estimates in the NOIs totaled more than \$1,500,000, ALJ Barnett's February 25, 1997 ruling cautioned:

"...all parties requesting compensation claim to be representing the same, or overlapping, constituencies; there are many areas of potential duplication; and there is an apparent unrealistic expectation for compensation. I direct all parties requesting compensation to agree among themselves and the Commission staff on issues which each will address *and are competent to address.*

Merely appearing, stating position, and cross-examining will not assure compensation. " (Administrative Law Judge's Ruling Re Notice of Intent to Claim Compensation, p. 2, emphasis in original.)

### 3. Eligibility

#### 3.1. Greenlining/LIF

Greenlining/LIF jointly filed a timely NOI on February 3, 1997 but, as noted in ALJ Barnett's February 25 ruling, elected to defer a showing of significant financial hardship and to make that showing in their compensation request.

Greenlining/LIF filed their compensation request on May 26, 1998, which is within the 60-day period following the issuance of D.98-03-073 and therefore timely.<sup>2</sup> They assert continued status as non-profit organizations representing "low-income, minority, limited English-speaking and other vulnerable populations of California." Greenlining/LIF base their claim of significant financial hardship on this non-profit status, as well as their stated inability to otherwise compensate their advocates for their time. Greenlining submits financial information for the period 12/1/96 - 11/30/97 which illustrates a zero balance after adjusted income is offset by expenses. For LIF, income exceeded

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<sup>2</sup> Inexplicably, the Greenlining/LIF compensation request states at page 3: "... on October 2, 1997, Intervenor's filed their Notice of Intent to Claim Compensation pursuant to 1804(a) and were subsequently found eligible." On June 23, 1998 Greenlining/LIF submitted an errata to their compensation request. The errata, which is nearly the same length as the initial request, corrects a number of other errors but does not correct this one.

The errata also requests leave to withdraw the declaration of Terry Houlihan regarding the reasonableness of requested attorney fee rates, which Greenlining/LIF submitted on May 27, 1998. By motion filed the same date, Greenlining/LIF had sought to file the declaration under seal. Since intervenors no longer wish to introduce the declaration, the motion is moot.

expenses by \$133,416 for the same period. Greenlining/LIF also note that we awarded them compensation for participation in the Pacific Bell/SBC Communications Inc. (SBC) merger (on a showing of financial hardship for the prior year very similar to the one they make here). (See D.98-04-025, mimeo., p. 16.)

With respect to a group or organization, Section 1802(g) defines "significant financial hardship" to mean that "...the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

We conclude that the potential economic interest of Greenlining/LIF members in this proceeding is insignificant compared to the costs of their participation. Accordingly, we find that Greenlining and LIF have each made a sufficient showing of significant financial hardship within the meaning of the statute and we will consider further their joint request for compensation.

### **3.2. TURN and UCAN**

In his February 25 ruling, ALJ Barnett found that TURN and UCAN had each filed a timely NOI, had established significant financial hardship and consequently were eligible to file a claim in this proceeding for intervenor compensation. TURN and UCAN filed a joint request<sup>3</sup> for compensation on June 1, 1998 which is 60 days following the issuance of D.98-03-073 and therefore timely.

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<sup>3</sup> The joint request includes separate statements of fees and expenditures for TURN and for UCAN.

#### 4. Contributions to Resolution of Issues

##### 4.1. Greenlining/LIF

Greenlining/LIF assert two major, direct impacts of their participation in this proceeding: a written, widely publicized commitment to workforce diversity by the applicants (which Greenlining/LIF include as an exhibit to their compensation request) and applicants' promise to increase charitable contributions to organizations serving low-income persons and ethnic minorities. In addition, Greenlining/LIF point to their involvement on particular aspects of aspects of customer service. Greenlining/LIF acknowledge that we rejected their position on establishment of an Equity Fund and state, appropriately, that they seek no compensation for time and resources devoted to that work. We examine the remainder of the Greenlining/LIF claim.

In D.98-03-073, after considering the arguments of all parties on the issue of employee diversity, we state:

"There is no question that overall, applicants have a diverse workforce that reflects the available minority workforce in their respective service territories. But it is clear that diversity has not yet filtered up to the higher levels of SDG&B's management. We are confident that over time it will. Commentary such as this [by Greenlining/LIF] should hasten the process. No formal order is necessary." (D.98-03-073, p. 101.)

The exhibit attached to the Greenlining/LIF request indicates that no formal order ~~was~~ necessary; it was sufficient that Greenlining/LIF raised the issue and that we memorialized the underlying record in D.98-03-074. We conclude that Greenlining/LIF made a substantial contribution on this issue.

On the issue of charitable contributions, however, D.98-03-073 is far less embracing of the Greenlining/LIF position than they suggest. In fact, we decline to adopt any of the positions which Greenlining/LIF and several other parties advance and state, quite clearly: "We shall not be generous with ratepayers'

money. Nor will we tell applicants how to spend their profits." (*Id.* at p. 99; see also Finding of Fact 136, 137.) We cannot award Greenlining/LIF for applicants' laudatory promise to alter its shareholders' pattern of charitable contributions because that issue, however important, is not one within our regulatory purview.

Finally, on the issue of customer service, we determine that D.98-03-073 does not support Greenlining/LIF's claimed substantial contribution. While our decision notes their position that the merger applicants should make additional commitments to low-income programs and services, including low-income weatherization, our decision finds they chose the wrong forum to raise these issues. We point Greenlining/LIF and others to SDG&E's or SoCalGas' performance-based ratemaking mechanisms and other specific proceedings. (*Id.* at p. 29; Finding of Fact 128; see also Finding of Fact 143.)

#### **4.2. TURN and UCAN**

TURN and UCAN generally combined their resources and efforts in this proceeding and we agree with their assertion that their participation was not duplicative. Their joint request alleges substantial contributions to our decision on the following six issue areas: merger savings; costs to achieve; market power issues; customer service issues; charitable contributions; and jobs in San Diego (a minimum headquarters staffing level in San Diego). Admitting that D.98-03-073 rejects their position on affiliate transactions, they appropriately do not seek compensation for time devoted to that issue.

On all but two issues—charitable contributions and San Diego staffing levels—we agree TURN and UCAN made substantial contributions to our decision. Their compensation request thoroughly documents that contribution by specific reference to the relevant page number or Finding of Fact in D.98-03-073. The references are numerous and we will not repeat them here.

The issues allocation which TURN and UCAN submit in their compensation request attributes participation on the remaining two issue areas--charitable contributions and San Diego staffing levels--to UCAN, alone. We cannot agree that UCAN made a substantial contribution on these issues. As we have already explained, however laudable applicants' off-the-record agreement to increase charitable contributions in southern California, and however responsive the agreement may be to the criticisms of various intervenors, D.98-03-073 finds no legal basis for the Commission to direct shareholders' charitable spending. Similarly, D.98-03-073 finds no basis, in fact or law, for mandating staffing levels in San Diego. (*Id.* at p. 99; Finding of Fact 139.)

**5. The Reasonableness of Requested Compensation**

**5.1. Greenlining/LIF**

Greenlining/LIF concede they devoted a majority of their time to their Equity Fund position beginning in August 1997. Since we rejected the Equity Fund, they propose we compensate them at different rates before August 1, 1997 and thereafter. They request compensation for 50% of the time they recorded prior to August 1997 and for 15% of the time they recorded thereafter. In their errata, they claim their total participation costs are \$516,339.56 which they discount to \$136,714.70. However, addition of the elements of the Greenlining/LIF request yield smaller sums, \$286,572.06 and \$81,598.94, respectively. The mathematical error is no doubt inadvertent.

	Recorded	Multiplier	Adjusted
<b>Attorney Fees</b>			
Robert Gnaizda before 8/1/97 (195.7 hours at \$360/hr.)	\$70,452.00	.5	\$35,226.00
Robert Gnaizda 8/1/97 forward (249 hours at \$360/hr.)	89,640.00	.15	13,446.00
Susan E. Brown before 8/1/97 (57.25 hours at \$250/hr.)	14,312.50 <sup>4</sup>	.5	7,156.25 <sup>5</sup>
Susan E. Brown 8/1/97 forward (261 hours at \$250/hr.)	65,250.00	.15	9,787.50
Itzel Barrió 8/1/97 forward (127 hours at \$125/hr.)	15,875.00	.15	2,381.25
<b>Subtotal Attorney Fees</b>	<b>\$255,529.50<sup>6</sup></b>		<b>\$67,997.00<sup>7</sup></b>
<b>Expert Fees</b>			
John Gamboa before 8/1/97 (38 hours at \$250/hr.)	\$ 9,500.00	.5	\$ 4,750.00
John Gamboa 8/1/97 forward (27.15 hours at \$250/hr.)	6,787.50	.15	1,018.13
Guillermo Rodriguez before 8/1/97 (8.6 hours at \$150/hr.)	1,290.00	.5	645.00
Guillermo Rodriguez 8/1/97 forward (18.7 hours at \$150/hr.)	2,805.00	.15	420.75
April Veneracion before 8/1/97 (80 hours at \$75/hr.)	6,000.00	.5	3,000.00

<sup>4</sup> Greenlining/LIF misplace the decimal point in their errata and show this figure as \$1,431.25.

<sup>5</sup> Greenlining/LIF misplace the decimal point in their errata and show this figure as \$715.63.

<sup>6</sup> This is the corrected sum.

<sup>7</sup> This is the corrected sum.



A.96-10-038 ALJ/XJV/tcg

April Veneracion 8/1/97 forward (14 hours at \$75/hr.)	1,050.00	.15	157.50
Subtotal Expert Fees <sup>8</sup>	\$27,432.50		9,991.38
Additional Costs	3,610.56		3,610.56
<b>TOTAL COSTS</b>	<b>\$286,572.06<sup>9</sup></b>		<b>\$81,598.94<sup>10</sup></b>

Below we discuss the reasonableness of the hours claimed and of the hourly rates requested.

#### 5.1.1. Greenlining/LIF's Hours

Greenlining/LIF's compensation request includes detailed time records for Robert Gnaizda, Susan Brown and Itzel Berrio which span the timeframe of this proceeding and describe the activities of each, the date and the number of hours expended. The errata includes similar time records for John Gamboa and Guillermo Rodriguez. Neither document includes time records for April Veneracion. Absent such documentation we cannot find that the claim for her time is reasonable, so we exclude those hours.

With respect to disallowance of time spent on the Equity Fund, we accept the Greenlining/LIF proposal to discount time recorded prior to August 1997 by 50% and to count only 15% of time recorded thereafter. Though we conclude that the result obtained is reasonable in this case, we remind Greenlining/LIF that we have long required a allocation of time by substantive

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<sup>8</sup> Greenlining/LIF do not provide a subtotal for expert witness fees. However, addition of the fees requested yields these figures.

<sup>9</sup> This is the corrected sum.

<sup>10</sup> This is the corrected sum.

	Recorded	Multiplier	Adjusted
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<b>Subtotal Attorney Fees</b>	<b>\$255,529.50<sup>6</sup></b>		<b>\$67,997.00<sup>7</sup></b>
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issue. Most recently we affirmed this requirement in D.98-04-059, which issued in our intervenor compensation rulemaking and companion investigation (R.97-01-009/I.97-01-010). (See D.98-04-059, p. 45-47.) We will also consider the 50% and 15% adjustments to meet the requirement that travel time be billed at 50% unless the intervenor shows that the time was used to work on compensable issues. (See D.98-04-059, p. 51.)

We make one further adjustment to Greenlining/LIF's hours. As discussed previously, we have determined that they made a substantial contribution on only one of the three issues for which they claim compensation. Consequently, after removing the 94 hours attributed to Ms. Veneracion, we allow 1/3 of the adjusted total.

#### 5.1.2. Greenlining/LIF's Hourly Rates

Greenlining/LIF request attorneys fees at the following rates: for Robert Gnaizda, \$360/hour; for Susan Brown, \$250/hour; for Itzel Berrio, \$125/hour. They request expert witness fees for John Gamboa of \$250/hour and for Guillermo Rodriguez at \$150/hour. We need not consider the requested hourly rates for April Veneracion since no time records have been provided to support that portion of their claim.

We have previously adopted hourly rates for all but Ms. Berrio. These rates are summarized below.

<u>Attorney/Staff Member</u>	<u>Time Period</u>	<u>Rate</u>	<u>Decision</u>
Gnaizda	1995-96	\$260	D.96-08-040
	1996-97	\$260	D.98-04-025
Gamboa	1994-96	\$125	D.96-08-040
	1996-97	\$125	D.98-04-025
Rodriguez	1994-96	\$ 95	D.96-08-040
	1996-97	\$100	D.98-04-025
Brown	1995-96	\$225	D.96-08-040
	Aug-Dec 1996	\$225	D.98-04-025
	1997	\$240	D.98-04-025

We adopt here, for the time period up to August 1, 1997, the highest rates we have previously awarded for similar work performed within that timeframe by these individuals: for Mr. Gnaizda, \$260/hour; for Ms. Brown, \$240/hour; for Mr. Gamboa, \$125/hour; for Mr. Rodriguez, \$100/hour. Though Greenlining/LIF argue that these rates are too low, we are not persuaded that higher compensation levels are warranted. The 96-97 rates we have authorized in the past, and which we adopt here, are fair both to intervenors and to the ratepayers who fund compensation awards: these rates are supported by market survey data for the Bay Area and are consistent with the rates we have authorized for other attorneys and experts of comparable training and experience.

For work performed on August 1, 1997 and thereafter, we consider Greenlining/LIF's request for an increase in their attorneys' rates. We also set an initial rate for Ms. Berrio. Of late, we rely heavily on the Of Counsel Survey in setting the rates of attorneys, and find declarations another informative approach intervenors have taken to demonstrate the reasonableness of a rate but we are not bound by Section 1806 to set rates in lock step with such surveys and declarations of comparable rates, however. Rather, we take them into consideration, and set a rate we regard reasonable that does not exceed the comparable market rate.

In support of their request that we authorize compensation for Mr. Gnaizda at \$360/hour, Greenlining/LIF submit the declaration of an attorney practicing in San Francisco, Morris J. Baller, as well as Mr. Gnaizda's own declaration. The declarations assert that the \$360 rate is lower than or comparable to the rate similarly skilled and experienced attorneys receive in San Francisco. Mr. Baller also argues the rate is reasonable because 1) it is for work performed on a contingency basis, where it is common practice to adjust upward the comparable, non-contingent fee; 2) it is customary for firms to charge the

same hourly rates to represent clients in administrative proceedings as they charge for representation in judicial proceedings; and 3) the complexity, technical aspects, scale, and public importance of the proceeding warrants the rate. We are not persuaded to authorize an increase of \$100 an hour for Mr. Gnaizda's work in this proceeding. For his time beginning in August 1997, we will increase his hourly rate to \$270/hour, well within the range of rates revealed in the Of Counsel Survey and at the high end of those authorized for other attorneys practicing before this Commission.

We agree that a \$10/hour increase, to \$250, is warranted for Ms. Brown's time for August 1997 and thereafter. Greenlining/LIF have adequately documented the reasonableness of such an increase by declaration; market survey data lends further support.

Greenlining/LIF state Ms. Berrio is a 1997 graduate of New York University and a member, since 1997, of the Illinois and California bars. They ask that we set her rate at \$125/hour and provide the declarations of Ms. Berrio and Ms. Brown in support. Ms. Berrio worked on this proceeding during her first year of practice. The timesheets submitted record her time from October 1997 through March 1998. We are not persuaded to authorize an hourly rate substantially above that we have approved for other counsel new the profession and to our proceedings." We adopt an initial rate for Ms. Berrio of \$85/hour. However, we will allow the full rate for time she spent on compensation related activities and will not reduce that time by half, as we frequently do when more experienced counsel draft such pleadings.

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" In D.98-04-025, for example, we authorized \$80/hour for work performed in 1996 by UCAN's attorney Charles Carbone, a 1996 law school graduate.

Next we consider an increase in rates for Greenlining/LIF's expert witnesses, Mr. Gamboa and Mr. Rodriguez, for work performed in August 1997 and thereafter. Support for the \$125/hour increase in Mr. Gamboa's rate (from \$125 to \$250) consists of a declaration from Mr. Gamboa detailing his training and experience. He asserts that he participated in a number of proceedings before this Commission in which opposing experts and facilitators were compensated at rates of \$300 or more. The declaration does not otherwise document these higher rates, though it alleges Mr. Gamboa would have charged a higher fee had he been hired by applicants or another utility. Absent a more persuasive showing, we cannot find it reasonable to authorize a higher compensation rate for Mr. Gamboa's participation in this proceeding and adopt the rate of \$125/hour for all approved hours.

Greenlining/LIF also support a \$50 increase in Mr. Rodriguez's rate (from \$100 to \$150) by declaration. We increased Mr. Rodriguez's rate from \$95/hour in 1995-1996 to \$100/hour in 1996-1997. We are persuaded that an additional \$5/hour is reasonable for 1997-1998, considering Mr. Rodriguez education and experience and the rates we have adopted for comparable experts. We adopt the rate of \$100/hour for all approved hours prior to August 1, 1997 and the rate of \$105/hour thereafter.

### **5.1.3. Greenlining/LIF's Other Costs**

Greenlining/LIF do not provide a breakdown, by category, of their claimed expenses but do attach copies of invoices, etc., as documentation, and also attach a list which identifies and totals the expenses. Included among the invoices are three amounts which we must exclude. The first is a \$282.98 for a secretary obtained from a temporary staffing agency. The request includes no explanation for the charge nor its relevance to litigation of this proceeding. The second is \$1,981.35 for an advertisement in The New York Times. Parties are free

to launch media campaigns to exploit their litigation positions at their own expense; such activities should not be billed to ratepayers under our intervenor compensation program. The third is \$13.75, which represents one half of a FedEX invoice for \$27.50. While this sum is minor, a handwritten note on the invoice clearly indicates that the expense should be attributed 50% to this proceeding and 50% to our electric restructuring proceeding. The remaining \$1,332.48 of Greenlining/LIF costs appear to be reasonable and we allow them.

**5.2. TURN**

TURN requests compensation of \$215,126.66 in this proceeding, including 130,276.25 in attorney fees. However, addition of the elements of the attorney fee claim yields a slightly higher figure, \$131,803.75, which increases the total to \$216,654.16, as show below. No doubt the error is inadvertent.

**Attorney and Expert Witness Fees**

Robert Finkelstein	6.5 hours (1997) at \$235/hr	\$ 1,527.50
Michel Peter Florio	14.50 hours (96-97) at \$275/hr.	3,987.50
	70.25 hours (97-98) at \$290/hr.	20,372.50
Theresa Mueller	103.25 hours (96-97) at \$195/hr.	20,133.75
	416.50 hours (97-98) at \$205/hr.	85,382.50
Paul Stein	2.50 hours (1997) at \$160/hr.	400.00
	<b>Subtotal</b>	<b>\$131,803.75<sup>11</sup></b>

**Experts at JBS Energy, Inc.**

William Marcus	158.75 hours at \$145/hr.	\$ 23,018.75
Jeff Nahigian	32 hours at \$85/hr.	2,720.00

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<sup>11</sup> This is the corrected sum.

A.96-10-038 ALJ/XJV/tcg \*

Greg Ruzovan	6.20 hours at \$85/hr.	527.00
Gayatri Schilberg	402.75 hours at \$105/hr.	42,288.75
	<b>Subtotal</b>	<b>\$ 68,554.50</b>

**Other Costs**

Attorney Travel		\$ 58.50
Photocopying expense		12,991.07
Postage costs		1,262.59
Federal Express charges		149.00
Long Distance Telephone Charges		259.90
Fax charges		435.50
Lexis research		526.00
JBS Costs (travel, fax, Fed Ex)		577.35
	<b>Subtotal</b>	<b>\$ 16,295.91</b>
	<b>TOTAL COSTS</b>	<b>\$216,654.16<sup>13</sup></b>

Below we discuss the reasonableness of the hours claimed and of the hourly rates requested.

**5.2.1. TURN's Hours**

TURN includes detailed time records for each attorney and describes the activities of each, the date and the number of hours expended. TURN's documentation of its experts' activities is not quite as exemplary, since specific tasks are not identified. However, because TURN provides a detailed allocation of hours by activity and issue for all of its attorneys and experts, we are able to determine, on balance, that the number of hours claimed is reasonable. The allocation shows that TURN's attorney and experts worked on each of the four

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<sup>13</sup> This is the corrected sum.



issues—merger savings, cost to achieve, market power, and customer service—on which the TURN/UCAN participation made a substantial contribution to our decision.

We urge TURN in future to submit time records for its experts which provide the same information supplied about its attorneys' participation in a given proceeding. TURN's compensation requests will then indeed be a clear, readily understandable and statutorily comprehensive model which more intervenors would be wise to follow.

### 5.2.2. TURN's Hourly Rates

At the time TURN filed its compensation request, we had authorized the 1997 rate of \$235/hour for Robert Finkelstein and the 96-97 rates of \$275/hour for Michel Florio and \$195/hour for Theresa Mueller. TURN provides supporting citations in its compensation request and we will not repeat them here. We adopt these rates for work performed by each of them during this timeframe in this proceeding. Subsequent to TURN's filing, we authorized a 97-98 rate of \$290/hour for Mr. Florio (in D.98-11-004) and a 1997 rate of \$160/hour for Paul Stein (in D.98-08-016). We adopt these rates here.

The only new request is that we increase Ms. Mueller's rate to \$205/hour for her work in 97-98. Ms. Mueller was TURN's lead attorney in this proceeding and shaped TURN's effective participation. TURN presents adequate justification for the increase, with market survey information to demonstrate that \$205/hour is within the range of rates charged Bay Area attorneys with Ms. Mueller's experience. We will authorize compensation at the rate of \$205/hour for work Ms. Mueller performed in 97-98.

We make the following adjustment to these rates, however. For reasons discussed previously, we decline to award compensation at Ms. Mueller's full hourly rate for the time spent preparing the compensation

### 5.3. UCAN

UCAN requests compensation in this proceeding as follows:

#### Attorney Fees

Michael Shames	413.60 hours at \$190/hr.	\$ 78,784.00
Charles Carbone	256.75 hours at \$90/hr.	23,107.50
	<b>Subtotal</b>	<b>\$101,891.50</b>

#### Other Costs

Attorney Travel		\$ 2,102.50
Long Distance Telephone Charges		68.22
Overnight Delivery		114.00
	<b>Subtotal</b>	<b>\$ 2,284.72</b>
	<b>TOTAL COSTS</b>	<b>\$104,176.22</b>

Below we discuss the reasonableness of the hours claimed and of the hourly rates requested.

#### 5.3.1. UCAN's Hours

UCAN includes detailed time records for both attorneys throughout the timeframe of this proceeding and describes the activities of each, the date and the number of hours expended. UCAN appropriately reduces travel time by 50%. It has removed from its request the approximately 100 hours its attorneys devoted to affiliate issues and allocates the remaining hours in the following manner. For Michael Shames: 30% general Section 854 issues (124.08 hours); 30% costs to achieve (124.08 hours); 40% customer service/community impact (165.44 hours). For Charles Carbone: 20% general Section 854 issues (51.35 hours); 80% customer service/community impact (205.40 hours).

We have already determined that TURN and UCAN made a substantial contribution to four issue areas--merger savings, costs to achieve,

market power issues, customer service issues--and that UCAN did not make a substantial contribution on two additional issues--charitable contributions and San Diego staffing levels. We must reduce UCAN's hours to reflect this fact.

However, because TURN and UCAN use somewhat different nomenclature to delimit the issues when discussing "substantial contribution on issues" than UCAN uses to explain its "time allocation among issues," our task is not as straightforward as it should be. We must assume that time devoted to the "charitable contributions" and "San Diego staffing levels" issue groups falls within "customer service/community impact" (it logically could not fall within any of the other issue allocation groups). Next we must fashion a fair adjustment. Recognizing that TURN and UCAN did make a substantial contribution to our decision on customer service, we will only reduce the number of hours UCAN allocates to "customer service/community impact" by half.

### **5.3.2. UCAN's Hourly Rates**

UCAN asks for attorney fees for Mr. Shames at our previously authorized rate of \$190/hour. We adopt this rate. However, for reasons discussed above, we will reduce the rate by one-half for the 5 hours Mr. Shames spent preparing the compensation request.

In D.98-04-025 we authorized \$80/hour for work performed by Mr. Carbone in 95-96. UCAN asks for an increase to \$90/hour for his work in this proceeding, considering his additional 18 months of experience. We find that this rate is supported by market survey data and adopt it.

### **5.3.3. UCAN's Other Costs**

UCAN requests reimbursement for miscellaneous costs which include travel for its attorneys between the San Diego office and San Francisco, lodging during the hearings and long distance telephone and delivery charges.

A.96-10-038 ALJ/XJV/tcg \*

In our judgment the costs are reasonable considering the duration and complexity of this proceeding.

**6. Award**

We summarize below the compensation awards to Greenlining/LIF, TURN and UCAN for their participation in this proceeding.

**6.1. Greenlining/LIF**

	Multiplier	Adjusted
<b>Attorney Fees</b>		
Robert Gnaizda before 8/1/97 1/3 x (195.7 hours at \$260/hr.)	.5	\$8,480.33
Robert Gnaizda 8/1/97 forward 1/3 x (249 hours at \$270/hr.)	.15	3,361.50
Susan E. Brown before 8/1/97 1/3 x (57.25 hours at \$240/hr.)	.5	2,290.00
Susan E. Brown 8/1/97 forward 1/3 x (261 hours at \$250/hr.)	.15	3,262.50
Itzel Barrio 8/1/97 forward 1/3 x (127 hours at \$85/hr.)	.15	539.75
<b>Subtotal Attorney Fees</b>		<b>\$ 17,934.08</b>
<b>Expert Fees</b>		
John Gamboa before 8/1/97 1/3 x (38 hours at \$125/hr.)	.5	\$ 791.67
John Gamboa 8/1/97 forward 1/3 x (27.15 hours at \$125/hr.)	.15	169.69
Guillermo Rodríguez before 8/1/97 1/3 x (8.6 hours at \$100/hr.)	.5	143.33
Guillermo Rodríguez 8/1/97 forward 1/3 x (18.7 hours at \$105/hr.)	.15	98.18
<b>Subtotal Expert Fees</b>		<b>\$ 1,202.87</b>
<b>Additional Costs</b>		<b>\$ 1,337.16</b>
<b>TOTAL COSTS</b>		<b>\$20,469.43</b>

**6.2. TURN**

**Attorney and Expert Witness Fees**

Robert Finkelstein	6.5 hours (1997) at \$235/hr.	\$ 1,527.50
Michel Peter Florio	14.50 hours (96-97) at \$275/hr. 70.25 hours (97-98) at \$290/hr.	3,987.50 20,372.50
Theresa Mueller	103.25 hours (96-97) at \$195/hr. 401.75 hours (97-98) at \$205/hr. 14.75 hours at \$102.50/hr. (comp prep)	20,133.75 82,358.75 1,511.88
Paul Stein	2.50 hours (1997) at \$160/hr.	400.00
	<b>Subtotal</b>	<b>\$130,291.88</b>

**Experts at JBS Energy, Inc.**

William Marcus	158.75 hours at \$145/hr.	\$ 23,018.75
Jeff Nahigian	32 hours at \$85/hr.	2,720.00
Greg Ruzsövan	6.20 hours at \$85/hr.	527.00
Gayatri Schilberg	402.75 hours at \$105/hr.	42,288.75
	<b>Subtotal</b>	<b>\$ 68,554.50</b>

**Other Costs**

Attorney Travel	58.50	
Photocopying expense	12,991.07	
Postage costs	1,262.59	
Federal Express charges	149.00	
Long Distance Telephone Charges	259.90	
Fax charges	435.50	
Lexis research	526.00	
JBS Costs (travel, fax, Fed Ex)	577.35	
	<b>Subtotal</b>	<b>\$ 16,295.91</b>
	<b>TOTAL COSTS</b>	<b>\$215,142.29</b>

**6.3. UCAN**

**Attorney Fees**

Michael Shames	328.38 hours at \$190/hr. (124.08 hr. + 124.08 hr. + 80.22 hr.)	\$ 62,392.20
	5 hours at \$145/hr. (compensation prep)	725.00
Charles Carbone	154.05 hours at \$90/hr. (51.35 hr. + 102.70 hr.)	13,864.50
	<b>Subtotal</b>	<b>\$ 76,981.70</b>

**Other Costs**

Attorney Travel		\$ 2,102.50
Long Distance Telephone Charges		68.22
Overnight Delivery		114.00
	<b>Subtotal</b>	<b>\$ 2,284.72</b>
	<b>TOTAL COSTS</b>	<b>\$ 79,266.42</b>

**6.4. Other Matters**

We assess responsibility for payment to Pacific Enterprises and Enova Corporation in proportion to their total recorded Commission jurisdictional revenues for 1997. (See, D.98-02-010, mimeo., p. 11; D.98-04-059, mimeo., p. 55-59.)

Consistent with previous Commission decisions, we order that interest be paid on the award amounts (calculated at the three-month commercial paper rate), commencing August 10, 1998 for Greenlining/LIP and commencing August 15, 1998 for TURN and UCAN (the 75<sup>th</sup> day, respectively, after intervenors filed their compensation requests) and continuing until the utilities make full payment of the awards.

As in all intervenor compensation decisions, we put Greenlining/LIP, TURN and UCAN on notice that the Commission Energy Division may audit their records related to these awards. Thus, intervenors must make and retain

adequate accounting and other documentation to support all claims for intervenor compensation. Their records should identify specific issues for which they request compensation, the actual time spent by any employees, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

#### **Findings of Fact**

1. In their joint filing, Greenlining/LIF have made a timely request for compensation for their contribution to D.98-03-073 and have made the showing of significant financial hardship which their NOI deferred.
2. In their joint filing, TURN and UCAN have made a timely request for compensation for their contribution to D.98-03-073.
3. Greenlining/LIF made a substantial contribution to D.98-03-073 on the single issue of workforce diversity.
4. We agree the Greenlining/LIF suggestion, that we compensate them for 50% of the hours they reasonably spent on this proceeding prior to August 1, 1997 and for 15% of the hours reasonably spent after August 1, is a fair means of avoiding any compensation for time spent on the Equity Fund proposal which D.98-03-073 rejects.
5. We disallow April Veneracion's hours; we cannot find time attributed to her as an expert witness reasonable since Greenlining/LIF provide no supporting documentation in their compensation request or errata.

6. After considering declarations submitted by Greenlining/LIF, market survey information, and the rates we have previously authorized for individuals of comparable training and experience, we authorize the following hourly rates as reasonable attorneys fees:

<u>Attorney</u>	<u>Time Period</u>	<u>Rate</u>
Gnaizda	before 8/1/97	\$260
	8/1/97 forward	\$270
Brown	before 8/1/97	\$240
	8/1/97 forward	\$250
Berrio	8/1/97 forward	\$85

7. After considering declarations submitted by Greenlining/LIF and the rates we have previously authorized for individuals of comparable training and experience, we authorize the following hourly rates as reasonable expert witness fees:

<u>Expert Witness</u>	<u>Time Period</u>	<u>Rate</u>
Gamboa	before 8/1/97	\$125
	8/1/97 forward	\$125
Rodriguez	before 8/1/97	\$100
	8/1/97 forward	\$105

8. After adjusting the Greenlining/LIF miscellaneous costs to remove 3 items which are not appropriate for intervenor compensation in this proceeding, we allow \$1,332.48.

9. TURN and UCAN made substantial contributions to D.98-03-073 in four issue areas: merger savings; costs to achieve; market power issues; customer service.



10. TURN and UCAN generally combined their resources and efforts in this proceeding and avoided duplication.

11. TURN has requested hourly rates that have either already been approved by the Commission or may be considered market rates for individuals with comparable training and experience.

12. Consistent with our established policy, we award compensation for the 14.75 hours Ms. Mueller spent preparing TURN's compensation request at one half her hourly rate, or \$102.50/hour.

13. The miscellaneous cost incurred by TURN are reasonable.

14. UCAN has requested hourly rates that have either already been approved by the Commission or may be considered market rates for individuals with comparable training and experience.

15. Consistent with our established policy, we award compensation for the 5 hours Mr. Shames spent preparing UCAN's compensation request at one half his hourly rate, or \$145/hour.

16. The miscellaneous costs incurred by UCAN are reasonable.

#### **Conclusions of Law**

1. Greenlining/LIF have fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

2. Greenlining/LIF should be awarded \$20,469.43 for their contribution to D.98-03-037.

3. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

4. TURN should be awarded \$215,142.29 for its contribution to D.98-03-037.

5. UCAN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

6. UCAN should be awarded \$79,266.42 for its contribution to D.98-03-037

7. This order should be effective today so that Greenlining/LIF, TURN and UCAN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED that:**

1. The Greenlining Institute/Latino Issues Forum (Greenlining/LIF) is awarded \$20,469.43 in compensation for their substantial contribution to Decision (D.) 98-03-037.

2. The Utility Reform Network (TURN) is awarded \$215,142.29 in compensation for its substantial contribution to D.98-03-037.

3. Utility Consumers Action Network (UCAN) is awarded \$79,266.42 in compensation for its substantial contribution to D.98-03-037.

4. Pacific Enterprises and Enova Corporation shall pay Greenlining/LIF \$20,469.43 within 30 days of the effective date of this order. Pacific Enterprises and Enova Corporation shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning August 10, 1998, and continuing until full payment is made.

5. Pacific Enterprises and Enova Corporation shall pay TURN \$215,142.29 and UCAN \$79,266.42 within 30 days of the effective date of this order. Pacific Enterprises and Enova Corporation shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal

A.96-10-038 ALJ/XJV/tcg

Reserve Statistical Release G.13, with interest, beginning August 15, 1998, and continuing until full payment is made.

This order is effective today.

Dated December 17, 1998, at San Francisco, California.

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