

Decision 00-01-017 January 6, 2000

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

Joint Application of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company for Ex Parte Interim Approval of a Loan Guarantee and Trust Mechanism to Fund the Development of an Independent System Operator (ISO) and a Power Exchange (PX) Pursuant to Decision 95-12-063 et al.

Application 96-07-001  
(Filed July 9, 1996)

**OPINION AWARDING COMPENSATION**

This decision grants The Utility Reform Network (TURN), on behalf of itself and the Utility Consumers' Action Network (UCAN), an award of \$197,028, plus interest from September 4, 1999, until date paid, in compensation for their contributions and participation in the Commission-sponsored working groups that had been instituted to develop and implement California's electric industry restructuring policy and culminated in the issuance of Decision (D.) 99-04-045.

**1. Background**

In the Preferred Policy Decision, D.95-12-063, as modified by D.96-01-009, which established the electric industry restructuring and regulatory reform process, the Commission adopted a framework for competition among the suppliers of electricity. Two key components of this competitive process were the Independent System Operator (ISO) and Power Exchange (PX). In Application (A.) 96-07-001, a joint application filed by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison), the utilities requested Commission

approval for a loan guarantee and trust mechanism to fund the development of the hardware and software necessary to allow the ISO and PX to perform their new functions under the electric restructuring policy.

A.96-07-001 culminated in D.96-08-038 which approved the utilities' request for funding the initial development of the ISO and PX. The decision also called for a continuation of the collaborative efforts of all of the concerned parties to the electric industry restructuring. TURN and UCAN then continued to participate in the Commission-sponsored working group activities for the development of the ISO and PX. Both UCAN and TURN contributed to the development of the ISO and PX through their participation in the Western Power Exchange Project (WEPEX) Steering Committee and Trust Advisory Committee (TAC). Since TURN and UCAN's participation in these working groups was a continuation of their participation in the development of the ISO and PX, they had previously requested compensation for the work in Rulemaking (R.) 94-04-031 and Investigation (I.) 94-04-032. In response to those filings, the Commission issued D.98-10-030 that granted the requested compensation for work through August 14, 1996. Compensation requested for work done subsequent to that date was denied without prejudice. The current request by TURN, on behalf of itself and UCAN (herein after TURN), requests compensation for work done from August 15, 1996, through September 4, 1997.

In D.99-04-045, we wound down the two trusts authorized by D.96-08-038 and discussed intervenor compensation for TURN and UCAN's participation in WEPEX activities. While TURN and UCAN's work might not have culminated in a "decision," as that term has traditionally been applied in evaluating intervenor compensation requests under the governing statutes, we determined that their collaborative development efforts were "critical" to maintain the viability of the ISO and PX. In particular, we recognized that the TAC was an

integral element in the Commission's approval of the utilities' request for loan approval and establishment of the respective Trusts. In addition, we acknowledged the benefits of collaboration achieved by WEPEX.<sup>1</sup> That decision also specified that the assistance to the Commission ended as of September 4, 1997.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>2</sup> 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 the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI 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,

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<sup>1</sup> D.99-04-045, mimeo., at pp. 11-13.

<sup>2</sup> All statutory citations are to Public Utilities Code unless otherwise noted.

"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 that determines whether the customer has made a substantial contribution and what amount of compensation to award. 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.

### **3. NOI to Claim Compensation**

A.96-07-001 was processed on an extremely expedited schedule. The joint application of PG&E, SDG&E, and Edison for a loan guarantee and funding trust mechanism was filed on July 9, 1996. On August 2, 1996, we issued D.96-08-038 without scheduling a prehearing conference or other formal gathering of the parties and before TURN or UCAN filed a notice of intent to claim compensation (NOI). Under § 1804(a)(1) a prehearing conference typically serves as the timing "trigger" for the filing of a NOI since the code requires that the NOI be filed "within 30 days after the prehearing conference is held." Although § 1804(a)(1) also provides that where a prehearing conference is not scheduled or where the proceeding is expedited, the Commission may determine the procedure for filing a NOI, the Commission did not do so before the final decision was filed.

In addition to the expedited disposition of A.96-07-001, there was an additional circumstance that may have contributed to the intervenors' not filing a NOI in that docket. Both TURN and UCAN had already filed requests for intervenor compensation in R.94-04-031 and I.94-04-032 for their contributions to the Commission-sponsored working group processes to develop and implement the electric restructuring policy. Those compensation requests included the hours and expenses claimed in this application. In October, 1998, we issued D.98-10-030 which granted compensation to TURN and UCAN for WEPEX work, but only through August 14, 1996. Compensation for the additional hours worked by TURN and UCAN subsequent to August 14, 1996, was denied without prejudice. Neither TURN nor UCAN could have anticipated our decision on the compensation request nor could either intervenor have anticipated that the fees from August 15, 1996, through September 4, 1997, would be disallowed. Since the work on the working group processes covered numerous aspects of the electric restructuring policy and involved many Commission decisions, TURN and UCAN may have been operating under the assumption that the NOI filed in either R.94-04-031 or in I.94-04-032 covered their requests for compensation.

In D.96-03-022, we discussed the importance of working groups and held WEPEX up as a model to be followed in establishing other such groups. (D.96-03-022, mimeo., at pp. 8-12.) We endorsed the same approach in D.96-08-038 and D.99-04-045. In response to D.99-04-045, TURN and UCAN filed their requests for compensation.

Since TURN did not file a NOI in A.96-07-001 before the final decision was filed, TURN is proceeding under § 1804(a)(1) and Rule 76.74(a) of the Commission's Rules of Practice and Procedure, which provide for an alternative method of filing a NOI. TURN is asking that the assigned administrative law

judge (ALJ) establish that June 21, 1999, the date this application for compensation was filed, be deemed the deadline for the NOI in this docket.

We recognize that the circumstances of TURN's and UCAN's involvement in the working group processes were atypical, as were the factors surrounding the failure to file a NOI. We will grant TURN's request to treat the June 21, 1999, filing as a timely NOI. However, we grant this request with the caveat that an intervenor's failure to file a timely NOI normally serves as an impediment to the receipt of compensation and we are making an exception this one time due to the amalgam of unusual conditions.

TURN's June 21, 1999, NOI did comply with § 1804(a)(2) as it set forth with particularity the amount of compensation sought and a detailed description of TURN and UCAN's contribution to the restructuring process.

No protests have been received to this compensation request.

#### **4. Eligibility for Compensation and Timeliness of Requests**

Both TURN and UCAN have previously been found eligible to claim compensation in the electric restructuring proceedings. The finding of significant financial hardship for TURN was made in an ALJ ruling issued on February 16, 1996, in A.94-05-042, and UCAN received a finding of significant financial hardship in a ruling issued on March 24, 1996, in A.94-11-013. Since the proceeding for which TURN, on behalf of itself and UCAN, is seeking compensation, A.96-07-001, was filed on July 9, 1996, it commenced within one year of the date of those findings of eligibility. Pursuant to § 1804(b)(1), there is a rebuttable presumption that both TURN and UCAN 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.

D.99-04-045 was issued on April 22, 1999, making TURN's request on June 21, 1999, timely.

## **5. Substantial Contributions**

TURN advances the position that both TURN and UCAN made substantial contributions to the commission through their participation in the Commission-sponsored working groups that developed the ISO and PX. These working groups were the vehicle used by us to implement our policy decision for a revised electric service industry in California. We knew that the actualization of that new policy and the establishment of the structure for the policy required significant input and work and we decided to rely on the consumers and business entities who would use the new structure for contributions.

WEPEX represented to us that it could provide a broad base of members with interests and opinions addressing the many issues that needed to be developed in the filing of the structure, function, and operation of the ISO and PX. WEPEX also requested recognition as a working group tasked to prepare the filings for the Federal Energy Regulatory Commission (FERC).

We accepted WEPEX's offer so that the working group would reflect a broad cross-section of interests and a diversity of viewpoints and perspectives. Both TURN and UCAN contributed to and participated in the WEPEX "working group." The ISO and PX were successfully developed through WEPEX and were ultimately approved by FERC. TURN and UCAN were the only parties throughout the WEPEX processes that represented exclusively the interests of the residential and small commercial ratepayers.

Initially, UCAN focused on ISO and PX development matters by participating in the ongoing WEPEX "definition teams" that discussed unresolved issues, prepared functional requirements documents, and served as staff to the WEPEX Steering Committee. TURN was not as actively involved in

WEPEX issues until November, 1996. At that time TURN attorney, Michael P. Florio (Florio), was selected to serve on the PX TAC. From November 1996, through September 1997, when the trusts were wound down, (D.99-04-045) Florio spent considerable time on TAC activities, as well as on the WEPEX Steering Committee.

We reviewed the value and necessity of the work performed in the WEPEX and TAC process in D.99-04-045. In the findings of fact, we explicitly stated the following:

17. The TAC was an integral element in our approval of Applicants' initial request for establishing the loan guarantees and respective Trusts.
18. We affirmed the benefits of collaboration achieved by the WEPEX and determined that WEPEX Steering Committee members should be given first choice on the TAC by the Trustee.
19. The TAC included representatives of interests affected by restructuring and were given substantial responsibilities.
21. While we confirm the assistance provided by the TAC, including that of the WEPEX Steering Committee, in achieving the successful start-up of the ISO and PX, this assistance ended as of September 4, 1997.<sup>3</sup>

Applying the substantial contribution standard laid out in § 1802(h) in the context of intervenors' work on the ISO and PX through the WEPEX and TAC committees, we agree that both TURN and UCAN made a substantial contribution.

We then review the work to determine if either intervenor duplicated the contributions of the other. Due to the collaborative nature of the WEPEX and

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<sup>3</sup> D.99-04-045, mimeo., at p. 11.



TAC processes, it is very difficult to isolate the elements of the work product directly attributable to the individual efforts of either TURN or UCAN.

However, after reviewing the Itemization of Services and Expenditures, it does not appear that there was any unnecessary duplication of work. Therefore, no reduction in the amount awarded to the intervenors is warranted.

As the application of TURN posits, in some instances it is difficult to determine whether contributions were a joint, or an individual effort of the intervenors. The request for compensation, therefore, asks that we make the award payable solely to TURN, who will then arrange for distribution of the award among the filing parties as appropriate.

## **6. The Reasonableness of Requested Compensation**

TURN, on behalf of itself and UCAN, requests compensation in the amount of \$197,028. 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. Specifically, we look at the number of hours claimed; separate but related proceedings; preparation of the compensation requests; reasonable hourly rates; ISO and PX working groups; and the WEPEX and TAC committees.

### **6.1 Overall Benefits of Participation**

We agree with TURN's argument that the ultimate success of the California restructuring effort was related to the successful start-up of the ISO and PX through the efforts of the WEPEX and TAC committees. TURN claims that both its attorney and the expert utilized by TURN and UCAN were involved in the development of the ISO and PX governance structures, their business rules and protocols, and many aspects of the filed tariffs. In addition, TURN claims that throughout the WEPEX and TAC processes, the attorney and expert worked

to achieve market structures that would operate to the benefit of small consumers. In the absence of any protest to these claims, we find sufficient benefits to the participation of TURN and UCAN to warrant a compensation award.

## **6.2 Hours Claimed**

TURN documented the claimed hours by presenting a daily breakdown of hours for Florio, attorney, and Eric Woychik (Woychik), outside consultant, with a brief description of each activity. The hourly breakdown presented by TURN reasonably supports its claim for total hours. Given the quality and comprehensiveness of the work on ISO and PX development issues and the WEPEX Steering Committee and TAC and the contributions to the electric restructuring policy, we believe that the many hours spent by TURN and UCAN was time well spent. We note that although UCAN initially took the lead on ISO and PX development matters, once TURN attorney Florio was selected to serve on the TAC, UCAN phased out of the WEPEX process. Both TURN and UCAN used their resources efficiently by not duplicating work or effort and both utilizing the services of one outside consultant, Woychik.

## **6.3 Hourly Rates**

TURN observes that the hourly rates requested for Florio are consistent with those already approved by the Commission in D.98-10-030, fiscal year 1996-97, and D.98-12-058, fiscal year 1997-98. Similarly, the hourly rate requested for Woychik was approved by the Commission in D.98-10-030.

Florio charged one-half of his hourly rate for preparation of the compensation request, which is in accordance with Commission practice.

#### **6.4 Other Costs**

TURN requests \$1,016 for travel expenses for Woychik and \$251 for postage and copying. These costs appear to be reasonable.

In total, TURN is seeking \$104,165 for Florio's attorney fees, \$92,612 for Woychik's consultant fees and travel expenses, and \$251 for postage and copying. The total amount of compensation sought is \$197,028.

#### **7. Award**

We award TURN, on behalf of itself and UCAN, \$197,028, calculated as described above.

We will assess responsibility for payment equally among PG&E, SDG&E, Edison, per the method first adopted in D.95-09-034.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount, calculated at the three-month commercial paper rate, commencing September 4, 1999, the 75<sup>th</sup> day after TURN filed this joint compensation request, and continuing until the utilities make a full payment of award.

As in all intervenor compensation decisions, we put TURN and UCAN on notice that Commission staff may audit TURN and/or UCAN's records related to this award. Thus, TURN and UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN and UCAN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

**8. Section 311(g)(2) - Uncontested/decision grants relief requested**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Findings of Fact**

1. TURN, on behalf of itself and UCAN, made a timely request for compensation for its contribution to D.99-04-045.
2. TURN and UCAN have previously been determined to be eligible for awards of compensation in the electric restructuring proceedings.
3. TURN and UCAN contributed substantially to D.99-04-045.
4. TURN requested an hourly attorney rate for Florio, and TURN and UCAN requested an hourly expert rate for Woychik, that have already been approved by the Commission.
5. The miscellaneous costs incurred by Woychik for travel expenses and the costs for copying and postage are reasonable.

**Conclusions of Law**

1. TURN, on behalf of itself and UCAN, has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. TURN, on behalf of itself and UCAN, should be awarded \$197,028 for their contribution to D.99-04-045.
3. PG&E, SDG&E, and Edison should pay to TURN, on behalf of itself and UCAN, that pro rata portion of the award based upon each utility's respective 1996 retail kilowatt-hours of electricity sold in 1996.
4. This order should be effective today so that TURN, on behalf of itself and UCAN, may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN), on behalf of itself and The Utility Consumers' Action Network (UCAN), is awarded \$197,028 in compensation for the joint intervenors' substantial contribution to Decision 99-04-045.

2. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) shall each pay to TURN that pro rata portion 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.

3. PG&E, SDG&E, and Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning September 4, 1999, the 75<sup>th</sup> day from the request, and continuing until full payment is made.

4. This proceeding is closed.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
Commissioners

I abstain.

/s/ LORETTA M. LYNCH  
Commissioner