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Decision 00-04-007 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to
Assess and Revise the Regulatory Structure
Governing California's Natural Gas Industry.

Rulemaking 98-01-011
(Filed January 21, 1998)

OPINION AWARDING COMPENSATION

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This decision grants The Utility Reform Network (TURN) an award of \$74,365.55 in compensation for its contribution to Decision (D.) 99-07-015.

1. Background

In this rulemaking, we assessed the current market and regulatory framework for California's natural gas industry with the goal of identifying appropriate reforms and reporting our findings to the Legislature. We sought to identify the services for which the public interest suggested the need for greater competition and determine the steps that the Legislature and this Commission must take to facilitate healthy competition. In the first part of this process, we identified the most promising options for further consideration. Those options are now the subject of settlement negotiations in Investigation (I.) 99-07-003.

The model we set forth in D.99-07-015 is one that preserves the utilities' traditional role of providing fully-integrated default service to core customers, while clearing obstacles to the competitive offering of gas commodity, transmission, storage, balancing and other services for all customers in the service territories of regulated local distribution companies throughout the state. Additionally, we would implement more vigorous consumer protection rules for the benefit of smaller customers and then remove limits that currently constrain participation in the core aggregation programs. We would continue to hold the local distribution companies responsible for providing safe service on both sides of the customer meter, while creating options for consolidated billing for customers who choose to take service from competitive providers.

We would extend certain improvements implemented in the Pacific Gas and Electric Company (PG&E) service territory to ensure that they remain in effect beyond the limits of the Gas Accord and enact similar reforms in the Southern California Gas Company (SoCalGas) service territory. It is hoped that

offering unbundled services will facilitate customer choice among competing providers offering attractive services at low prices.

1.1 Procedural History

The Commission issued the Order Instituting Rulemaking (OIR) for R.98-01-011 on January 21, 1998. We recapitulate the complicated procedural history because it is relevant to the time necessary for participation in this quasi-legislative proceeding.

Interested parties were invited to join the California gas utilities to comment on the Strategic Planning Division's report, Strategies for Natural Gas Reform: Exploring Options for Converging Energy Markets, and respond to a list of questions attached to the OIR; replies were also allowed.¹ A full panel hearing was held on April 6, 1998. The assigned Commissioners issued a ruling on April 23, 1998 directing the utilities and other parties to take various steps to assist us in our investigation of the natural gas industry. First, the assigned Commissioners asked parties to file Market Conditions Reports testimony by July 15, 1998 describing participants' experiences with the utility procurement, transportation and storage services, with rebuttal testimony (or comments to the Reports for those electing not to file testimony) due August 21, 1998. Second, the assigned Commissioners asked parties to file briefs on jurisdictional issues raised by the proposals in the Division of Strategic Planning (DSP) Report. Third, the assigned Commissioners requested that parties form two working groups: 1) a Revenue Cycle Services (RCS) Safety Working Group to address safety concerns related to the unbundling of meter provision and related services and report to

¹ There were 47 active parties to the case, defined as those parties submitting comments or reply comments.

the Commission by September 15, 1998; and 2) a Statewide Consistency Working Group to develop an inventory of significant inconsistencies in gas market structure and regulatory treatment across the State, and report to the Commission no later than September 4, 1998. Last, they notified parties that the Commission would hold a roundtable discussion on safety issues on June 11, 1998.

On August 6, 1998, the Commission issued its first Interim Order in this rulemaking, D.98-08-030. In that order, we stated our intention to focus on appropriate market structure, keeping in mind our articulated goals.

On August 28, 1998, the California Legislature and the Governor enacted Senate Bill (SB) 1602, creating Section 328 of the Public Utilities Code. That section expressly allowed the Commission to investigate issues associated with the further restructuring of natural gas services, but prohibited the Commission from "enacting" any gas industry restructuring decisions prior to January 1, 2000. It also stated that any natural gas restructuring decisions for core customers issued after July 1, 1998 would not be enforced.²

In response to this legislation the Commission issued the second Interim Order in this rulemaking, D.98-10-028, on October 8, 1998. In that order we set a new procedural schedule, including a prehearing conference, evidentiary hearings, briefs, oral argument and open comment meetings, to assist us in preparing a report to the Legislature identifying our proposed long-term market structure for the natural gas industry. We further clarified that, in the absence of further statutory instruction, we would not adopt a final market

² AB 1421, passed late last year, has replaced the language of SB 1602 in Pub. Util. Code § 328.

structure policy decision before January 1, 2000. Finally, we noted that, consistent with SB 1602, we would not require the utilities to file unbundling applications as directed in D.98-08-030.

On November 4 and December 1, 1998, President Bilas and Administrative Law Judge (ALJ) Weissman held prehearing conferences, first to discuss the format and schedule for evidentiary hearings, and then to discuss the scope of our market inquiry. President Bilas issued a ruling (on December 21, 1998) that clarified the scope of our inquiry in the Market Conditions hearings and the procedure for our effort to produce a report to the Legislature. Then, on January 19, 1999, President Bilas and ALJ Weissman convened two weeks of panel-style hearings to hear testimony regarding options and proposals for hub, storage, balancing, transmission, and core procurement services. Briefs were filed on February 26, 1999; reply briefs were submitted on March 11, 1999. The Commission heard oral arguments and the case was submitted on March 23, 1999. The assigned Commissioner and ALJ mailed a proposed decision on May 25, 1999. Various parties filed comments and reply comments.

1.2 History of TURN's Participation

TURN consulted with DSP on its Green Book even prior to the issuance of the OIR in this matter.³ On March 23, 1998, pursuant to the February 10, 1998, ruling of ALJ Malcolm, TURN filed written comments. TURN participated in meetings and conferences in preparation for the full panel hearing on April 6, 1998. TURN participated in the full panel hearing in two out of five panels, as well as answering questions at the end from Commissioners.

³ The question whether this time is compensable is reached in Section 4.

On May 8, 1998, TURN and James Weil decided to participate jointly in the rulemaking. Weil would concentrate on gas balancing issues and the two working groups, charging TURN for half his time. On June 11, 1998, Weil participated in a round table discussion on behalf of both parties. He participated fully in both working groups.

TURN dealt with the other aspects of the proceeding. For example, during 1998, TURN filed a Reply Brief on Jurisdictional Issues (6/22/98), a Motion to Compel Discovery (6/23/98), and a Motion for an Evidentiary Hearing (8/21/98). On September 1, 1998, TURN filed its Comments on Market Conditions Reports. Meanwhile, the Commission had issued an interim decision, D.98-08-030; TURN responded to the Applications for Rehearing (9/23/98). TURN also commented on the Energy Division's proposed Consumer Protection Program and Legislative Agenda (11/16/98).

Initially, Weil and TURN agreed that TURN would concentrate on assessment of market conditions. However, when market conditions hearings began in January 1999, TURN's Marcel Hawiger and Weil agreed that both would participate.⁴ In February and March 1999, Weil and TURN collaborated on opening and reply briefs. In June 1999, Weil and TURN again collaborated on comments and replies to the proposed decision that became D.99-07-015.⁵ In

⁴ The two parties divided up issues as convenient, and Weil did not bill TURN for hearing time.

⁵ Weil billed TURN for one-half of the time Weil spent on those pleadings.

sum, TURN actively participated in the proceeding for its entire 18-month duration.⁶

1.3 Jurisdictional Facts

The Commission approved D.99-07-015 on July 8, 1999; it is a final order as defined in Rule 76.72 of the Commission's Rules of Practice and Procedure because it closed the proceeding. TURN here seeks compensation for its contributions to the decision. This compensation request, filed on September 7, 1999, the 60th day following the issuance of the decision, is timely. The request reopens the proceeding.

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 Code §§ 1801-1812⁷. 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. (Pub. Util. Code § 1804(a).)

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

⁶ The two parties would eventually file separate compensation requests. TURN would request compensation for all hours and expenses that Weil billed to TURN; Weil would exclude such hours and expenses from his own compensation request. In the future, if TURN uses Weil as a consultant, TURN should include Weil's detailed and allocated-by-issue time records in its request for compensation, as well as his resume.

⁷ All statutory references are to the Public Utilities Code unless otherwise indicated.

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."

3. NOI to Claim Compensation

On May 5, 1998, pursuant to the March 17, 1998, ruling of Assigned Commissioners Bilas and Knight, TURN filed its NOI. The NOI included an explanation of its status as an individual customer of respondent PG&E, a statement regarding the adequacy of representation, a statement of the nature and extent of its planned participation, a compensation estimate of \$156,500 for the rulemaking as originally envisioned, and a showing that participation in the proceeding without compensation would pose a significant financial hardship.

On June 5, 1998, ALJ Weissman issued a ruling that determined that both TURN and Weil were customers as defined in Pub. Util. Code § 1802, that both had established that they would experience significant financial hardship by participating in this proceeding, and that they had provided adequate estimates of the nature and extent of their planned participation. The ALJ found that both Weil and TURN had met the standards for eligibility for compensation. We affirm the ruling here.

4. Underrepresentation, Necessity, Necessary for a Fair Determination of the Proceeding and Productivity

The record supports TURN's contention that its recommendations differed from those of other parties, such as the Office of Ratepayer Advocates (ORA), and that TURN made a significant contribution to the final outcome of the proceeding. In D.98-04-059, we emphasize the necessity for certain findings in support of an order awarding compensation. For eligibility to seek compensation, an intervenor must show undue financial hardship and customer status, as well as an indication that the customer interests the intervenor represents would otherwise be underrepresented. At the compensation award stage, underrepresentation and several other factors are reviewed to assess the usefulness of the intervenor's participation. TURN showed that Weil and TURN were the only parties solely representing residential and small commercial customers, thereby adding focus on their concerns. Without their participation, those customers would have been underrepresented. (D.98-04-059, Finding of Fact 13, slip op. at p. 83.)

In D. 98-04-059, we also note the touchstones in Section 1801.3(f) for the administration of the compensation program: Productive, Necessary, and Needed Participation. TURN's participation was necessary in that it did not duplicate the work of ORA and its contributions provided independent benefits to ratepayers. This participation was necessary for a fair determination of the proceeding in that the issues it addressed were relevant, within the scope of the proceeding and within the Commission's jurisdiction. Moreover, TURN participated in a productive manner. A perusal of its attorneys' time records indicates that their use of time was reasonably efficient and the team work with Weil underscores this finding.

While some of the benefits of TURN's participation are intangible, we think that the various reductions incorporated into this compensation request operate as a reasonable proxy for monetizing the value of the benefit realized from TURN's participation in relation to its actual cost. For instance, TURN reduced its request by 60% of time spent commenting on the proposed decision. We further reduce TURN's hours spent briefing the market conditions issues because of mixed success.

5. Contributions to Resolution of Issues

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. A party may make a substantial contribution to a decision in several ways.⁸ The party may offer a factual or legal contention upon which the Commission relied in making a decision,⁹ or the party may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.¹⁰ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position entirely.¹¹ The Commission has provided compensation even when the position advanced by the intervenor is rejected.¹²

⁸ Pub. Util. Code § 1802(h).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

In this instance, the Commission assessed the California natural gas industry and determined what promising options to pursue out of a huge field of options in revising the regulatory structure. In the quasi-legislative context particularly, we are faced with the difficulty of assessing the benefit of attendance at working groups and panels. We want to encourage participation but compensate only added value. We agree to compensation for attendance where it is necessary to meaningful participation, either at the time of the working group or panel or in briefs and comments afterward.

TURN has divided its contributions into phases of the proceeding, and because of the unusual progression of this matter, we will follow its lead on this.

5.1 Initial Efforts

TURN claims that its efforts began prior to the issuance of the OIR, when it held meetings with DSP staff about the Green Book drafts. We will not compensate for time prior to the issuance of the OIR in this proceeding. While we acknowledge doing so in the omnibus electric restructuring proceeding (D.96-08-040), we stated there that allocation to DSP reports known as "the Blue Book" and "the Yellow Book" was reasonable in the particular circumstances of that proceeding. Here, only TURN claimed hours preceding the issuance of the OIR in this proceeding, and those hours were few and far between.¹³ The link from that input almost six months prior to the Green Book issuance, through the entire rulemaking to the result in D.99-07-015 is too tenuous to be considered

¹³ Florio claimed 2.50 hours on 3/21/97 and 1.50 hours on 8/15/97. Ms. Mueller also claimed 1.50 hours on 8/15/97. The Green Book issued on January 21, 1998.

"preparation for a proceeding" under the statute. Thus, we must deduct from TURN's compensable hours, those listed that are prior to January 21, 1998.¹⁴

In its initial comments, and in its participation in two out of five panels in the full panel hearing, TURN's primary comments and recommendations were that the Commission:

- ◆ Unbundle various service components, but create an "uncollectibles pool" to prevent redlining;
- ◆ Consider a general cost allocation methodology in a rulemaking proceeding but maintain BCAPs for utility-specific allocation;
- ◆ Adopt a different alternative for regulatory streamlining than the three options presented in the Green Book;
- ◆ Reject an ISO system and ensure that a cost-based default provider of commodity be established if the retail energy commodity was divested; and
- ◆ Adopt consumer protection standards modeled on those in the electric industry.

D.99-07-015 considered issues related to unbundling, regulatory reform, and consumer protection. The decision identified as promising options some of the same components supported by TURN. One significant difference was that we identified billing, but not after-meter services, as a promising option for further study (Conclusions of Law 18 and 19, slip op. at p. 143). We agreed with TURN (and other parties) that cost and rate separation is a necessary first step to offering competitive options (Finding of Fact 45, slip op. at p. 141) and recommended that consumer protection legislation be adopted by the Legislature (Ordering Paragraph 11, slip op. at p. 145.)

¹⁴ See Section 6.3 below.

We did not address other issues related to market structure and regulatory streamlining in D.99-07-015, nor did we attribute our findings to any party. However, we conducted hearings on market conditions, discussed unbundling some aspects of gas service (and definitely not others) and found that consumer protections were necessary. Moreover, we directed that these comments be filed, and we will compensate for them.

Thus, we find that compensation for most of the initial efforts are warranted, but not for those hours prior to the issuance of the OIR.

5.2 Working Groups

Weil, on behalf of himself and TURN, attended and spoke at the roundtable discussion on RCS safety. This led to further working group sessions on this issue, and ultimately, a useful report.

In D.99-07-015, we viewed the competitive provision of meters to be a promising option, consistent with the goal of ensuring safe and reliable service, but not the unbundling of meter reading or servicing or after-meter services. (D.99-07-015, discussion at slip op. pp. 84-85.) We relied on the working group report as well as testimony in coming to our determinations, and we appreciated their efforts. Weil's contribution to the RCS Safety Working Group is fully compensable, including the hours charged as TURN's consultant.

We also asked the Statewide Consistency Working Group to create a detailed inventory of significant inconsistencies in policies, programs, tariffs, rules and procedures employed by gas utilities throughout California. The group produced this "remarkable" inventory in its Report of the Statewide Consistency Working Group on September 4, 1998. (D.99-07-015, discussion at slip op. p. 132.) This tool will aid us greatly in our further consideration of consistency issues.

Thus, in light of our desire to encourage the use of alternatives to litigation,¹⁵ we are willing to compensate for active participation¹⁶ in the working groups, even when we do not adopt every proposal in the working group reports. (D.97-02-047, slip op. at p. 2.) Working groups are beneficial because they engage all stakeholders in examining important issues. (D.96-08-040, 67 CPUC2d 562, 568.) When, as here, the intervenor is active in the group and the group produces a product that aids in the decision-making, the time is compensable.

This proceeding parallels in some ways the Commission's recent electric industry restructuring rulemaking. In awarding compensation in that proceeding, we determined that there was some duplication of effort, but because of the extraordinary level of participation required, reductions to awards of compensation due to duplication were unwarranted. (D.96-08-040, 67 CPUC2d 562, 575-576.) Here, Weil and TURN have mitigated duplication of effort by joint participation in the working groups.

In the electric industry restructuring proceeding, we stated:

"The cooperative efforts participated in by the intervenors, including the working groups..., are essential in building a California consensus." (*Ibid.* at p. 576.)

¹⁵ D.95-08-024, 61 CPUC2d 61, 66.

¹⁶ We recognize that intervenors may need to attend working groups or panels in the event something of import to them arises. If it does, their active participation is clearly compensable. However, if they do not participate, they risk receiving no compensation for the time spent. In that situation, only if later work product substantially draws from the working group or panel will compensation for the silent activity be compensated. The derivation of this compensation is public benefit; accordingly, the benefit must be shown, not just inferred from silent presence.

* * *

"In our view, to deduct from an award of reasonable fees in this case would not encourage the effective and efficient participation of all stakeholders in the spirit of §1801.3(b)." (*Id.*)

* * *

"Because the working group process was initiated by this Commission, we allow all hours for participation in it." (*Ibid.* at p. 577.)

For these reasons, we find that compensation in full for participation in and preparation for the two working groups is justified.

5.3 Market Conditions Issues

TURN filed comments and reply comments on the Market Conditions Reports, conducted cross-examination during the two weeks of hearings, and submitted both opening and reply briefs in this phase of the proceeding. TURN offered recommendations regarding core procurement, intrastate transportation, balancing and storage services, and information disclosure. (See TURN Opening Brief, pp. 3-4.)

TURN acknowledges that it was not one of the "main players" in the market conditions stage of the proceeding. The core customers whom TURN represents do not have as strong an interest in the operational and informational issues that dominated the market conditions reports and hearings. Nevertheless, because many of the issues regarding core procurement, component unbundling, imbalance responsibility and cost allocation may ultimately affect core

customers, it was essential for TURN to participate in the evidentiary hearings. TURN again collaborated with Weil in this phase.¹⁷

TURN's primary recommendations concerned the issue of core procurement. TURN recommended that the Commission refrain from further consideration of divesting the core procurement function, since core customers were obtaining cost-based service with good performance in commodity value from the incumbent utilities. (TURN Opening Brief, pp. 8-9; Reply Brief, p. 3.) We adopted this position. (D.99-07-015, Finding of Fact 29, slip op. at p. 139.) TURN also recommended that interstate capacity costs on the SoCalGas system should be unbundled from core rates. (TURN Opening Brief, pp. 6-7.) We agreed with TURN on this general position, although we did not (and legally could not at the time) adopt TURN's recommendation that the multi-party settlement in A.97-12-048 be adopted. (D.99-07-015, Finding of Fact 31, slip op. at p. 139.)

TURN generally supported consideration of unbundling transmission and storage components in the next phase of the gas strategy proceeding. We recommended that unbundling of transmission and storage be considered as promising options in the next phase. (D.99-07-015, Findings of Fact 1-9, slip op. at pp. 136-137.)

On a variety of other issues of less importance to core customers, the decision sometimes followed and sometimes differed from TURN's positions. TURN recommended in its Opening Brief and in its Comments on the proposed

¹⁷ During market conditions hearings, Weil did not function as TURN's consultant except insofar as he helped to draft sections of TURN's opening and reply briefs on balancing issues and the joint proposed decision comments regarding balancing and several other issues.

decision that the Commission find that noncore customers cause the majority of system imbalances. We did not follow this recommendation, but neither did we find that core customers caused the majority of imbalances, as recommended by noncore representatives. (D.99-07-015, discussion at slip op. p. 34.) TURN objected to the Utilicorp Energy Solutions, Inc. proposal to eliminate the core/noncore distinction (TURN Reply Brief, pp. 1-3), and we rejected the Utilicorp proposal. (D.99-07-015, discussion at slip op. pp. 62-63.) TURN objected to requiring disclosure of demand forecasts segregated by customer class (TURN Reply Brief, pp. 4-5), but we found this issue should be examined as a promising option. (D.99-07-015, discussion at slip op. pp. 79-84.) TURN objected to guaranteed stranded cost recovery for the utilities, and we did not adopt any mechanism for recovery of transition costs.

TURN recognizes that many of the issues addressed in the Market Conditions phase of the proceeding primarily affected noncore gas customers, and that TURN's position sometimes echoed the positions of either market participants or incumbent utilities. For this reason, and due to the rejection of certain of TURN's recommendations in the final decision, TURN discounts 10% of the time spent in the evidentiary hearings and brief-writing, and 60% of the time spent on comments to the proposed decision.

As in the our decision regarding Weil's compensation request for this proceeding, we find that TURN's results in this segment of the case were mixed. Weil voluntarily disallowed 60% of time spent on market conditions pleadings because of these results. TURN prevailed, or at least did not lose, on a few more issues than Weil. Accordingly, we believe that TURN should have discounted its briefing time by 40%, not just 10%. Therefore, TURN will be compensated for the time spent in the evidentiary hearings less 10% for

duplication, for the time spent on briefing market conditions issues¹⁸ less 40%, and for the time spent on comments on the proposed decision less 60%.

Thus, our finding is that TURN did contribute substantially to D.99-07-015 through its extensive participation in the rulemaking proceeding, but that its hours cannot be fully compensated because its positions, while informative, were not wholly successful.

5.4 Consumer Protection

We identified elements of a consumer protection program in the Green Book, and the Energy Division subsequently issued a proposed Consumer Protection Program. TURN submitted comments on consumer protection issues in its Opening Comments, in Comments on the Proposed Consumer Protection Program, and in Comments on the proposed decision.

TURN substantially supported the original framework suggested in the Green Book of following the standards adopted in SB 477 for the electric industry. The final consumer protection program adopted in D.99-07-015 for recommendation to the Legislature follows this framework. In its initial Opening Comments, TURN emphasized the need for written disclosure of price and terms prior to contract execution and the need for jurisdictional authority to resolve complaints. We ultimately adopted both these recommendations. (D.99-07-015, slip op. at pp. 90-91, 113.)

TURN proposed three additions and clarifications (regarding written notice, bill format, and future procedure) to the proposed decision, none of which we adopted. However, neither did we weaken the proposed rules

¹⁸ We distinguish briefing from the pleadings filed during the market conditions hearings, such as the discovery pleadings.

regarding registration and notification as suggested by other parties. Thus, we find that TURN's recommendations and TURN's advocacy for consumers played a significant role in our final consumer protection program.

The time spent on consumer protection issues is included in both the Initial Efforts and the Market Conditions phases of the proceeding. Because we did not follow many of TURN's recommendations in its comments on the proposed decision, TURN voluntarily disallows 60% of its time spent on writing comments on the proposed decision. This disallowance is reflected in the time billed to the market conditions phase.

6. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$77,467.95¹⁹ as follows:

Attorney/Category	Total Hours or Amount Expended	Hours or Amount Claimed for Compensation	Total Amount Claimed for Compensation ²⁰
Michel Florio	46.25	43.38 (94%)	\$12,860.00
Theresa Mueller	87.75	87.37 (99%)	\$17,910.85
Marcel Hawiger	182.75	159.51 (87%)	\$27,324.50
Bob Finkelstein	1.5	1.5 (100%)	\$ 375.00
Consultant James Weil	\$15,963.06	\$14,943.06 ²¹ (94%)	\$14,943.60
Direct Expenses	\$4,054.54	\$4,054.54 (100%)	\$ 4,054.43
TOTAL			\$77,467.95

¹⁹ The hours requested are those remaining after TURN has deducted 10% of the time spent in the market conditions evidentiary hearings and brief-writing, 60% of the time spent on comments to the proposed decision, and half of the time spent on the compensation request.

²⁰ The "Total Claimed" does not exactly match the product of columns three and four due to the discounting of hours (claimed at only half the normal hourly rate) spent on the compensation request.

²¹ It is not entirely clear why Weil's compensation is discounted. We surmise that it is because he charged TURN for administrative time. If so, TURN has correctly subtracted those hours from its request for compensation.

There was no opposition to this request.

6.1 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."

TURN seeks compensation at different rates for different attorneys and half the indicated rate for 1998-99 for work on the compensation request. It seeks no compensation for travel time with the exception of Weil's allocated travel time appropriately charged at half his rate.

In previous decisions, we have adopted an hourly rate of \$290 for Florio in 1997-98 and \$300 for 1998-99. We have adopted an hourly rate of \$205 for Mueller for 1997-98. Due to her limited number of hours in 1998-99, TURN is not requesting an increase in Mueller's hourly rate for 1998-99. We adopted an hourly rate of \$250 for Finkelstein in 1998, and an hourly rate of \$160 for Hawiger in 1998. TURN requests in this proceeding that the Commission adopt an hourly rate of \$175 for Hawiger in 1999. TURN submits that this 9.4% increase is appropriate for Hawiger. Moreover, TURN notes that the Commission approved a rate increase of 15% for Mueller's second year of work at TURN.

Generally, we approve increases based on more extensive argument and evidence than provided here for Hawiger. For example, the survey "Of Counsel" is submitted as an objective standard, and a résumé is submitted as well. Since these items have not been submitted here, we are unwilling to approve a \$15 per hour increase in Hawiger's fees. Based on the year of experience accrued by Hawiger, we are willing to grant an additional \$10 per hour, or \$170 per hour total. We assume, without TURN informing us in its

request, that Weil's time is charged at \$200 per hour, and reflects the discounting taken before he billed TURN.

We find that it is reasonable to pay the hourly rates stated above except for Hawiger, for whom we find that \$160/hr for time in 1997-98 and \$170/hr for time in 1998-99 is reasonable.

6.2 Hours Claimed & Allocation to Issues

TURN allocated its costs by phases as previously allowed in D.96-08-040. We instruct TURN to use issue allocation to a greater extent in the next phase so that success on issues can be more clearly determined. We note that, in keeping with Commission practice, it will still not be necessary to allocate certain uses of time to specific issues. These hours include those devoted to initial efforts (here, initial comments, the full panel hearing and the round table), and to general preparation (here, initial review of the OIR, review of the comments, motions and discovery requests of other parties, attendance at the prehearing conference and discovery conferences, and the preparation of the NOI).

In total, 69.25 hours were allocated to the "Green Book" phase, 5.5 TURN hours and 42.55 Weil hours²² for the working groups, 227.25 hours for the market conditions issues, including the comment time, and 16.25 hours for compensation request time.

The rulemaking was a search for promising options. Without the contributions to the record from those whose tendered options were rejected, our

²² Again, we are forced to get this information from Weil's submission, because it was unclear in TURN's submission. In future, we require that consultant's time be clearly set forth and allocated, and the hourly rate substantiated so that we avoid inadvertent excessive compensation.

search would have been too narrow in focus. We needed the broader education on the issues as the parties see them. Accordingly, we believe that TURN's contribution to the search we undertook should be rewarded at the reduced level reflecting generally TURN's success on the issues.

TURN documented its hours by submitting a spreadsheet reflecting date, attorney, an abbreviated description of the activity, and the billable time value. A review of the time records submitted indicates that permissible activities, such as reviewing documents, writing briefs and various preparation work, are included in the time records. However, TURN correctly does not request compensation for review of documents that did not lead to further participation, such as reviewing replies to comments.

The time records adequately support TURN's claim of total hours spent. TURN spent a reasonable number of hours on the proceeding, teamed with Weil to perform efficiently, and added value to the proceeding.

6.3 Direct Expenses

TURN claims \$4,054.54 in "direct expense" or , as shown on its more detailed submission, cab fare, copying, faxing, Lexis research, phone use, postage. This proceeding required unusually high expenditures because of the large number of parties involved. We will grant the request as reasonable. While in this case it is de minimus, we note that \$2 a minute for faxing is high and will require further proof for large expenses at this rate. Accordingly, direct expenses will be paid at \$4,054.54.

6.4 Awarded Compensation

Based on our determination to deduct the hours Florio and Mueller spent prior to January 21, 1998, and to discount by 40% the time that Hawiger²³ spent on briefing the market conditions issues, we make the following award calculations:

Attorney/Category	Total Hours or Amount Expended	Hours or Amount Allowed for Compensation	Total Amount Awarded for Compensation
Michel Florio	46.25	11.5+27.88=39.38	\$11,699.00
Theresa Mueller	87.75	85.87	\$17,603.35
Marcel Hawiger	182.75	39.25+114.18=153.43	\$25,690.60
Bob Finkelstein	1.5	1.5	\$ 375.00
Consultant James Weil	\$15,963.06	\$14,943.06	\$14,943.06
Direct Expenses	\$ 4,054.54	\$ 4,054.54	\$ 4,054.54
TOTAL			\$74,365.55

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub.Util. §311(g) and Rule 77.1 of the Rules of Practice and Procedure. TURN filed comments requesting non-substantive clarifications. These have been made, along with a few other minor changes.

8. Award

We award TURN \$74,365.55 for its contributions to D. 99-07-015. This award reflects deductions for time spent prior to the OIR's issuance, further

²³ We added together the number of hours attributed by Hawiger to briefing (35.25) and determined that 40% of that amount is 14.10. We deducted that amount from his total of 80.25 hours allocated to hearings and briefs in the Market Conditions phase for a total compensable part of 66.15. We are not discounting the time that Florio spent supervising the briefing.

discounting of briefing time on market conditions, and a lesser rate for Hawiger in 1998 than requested.

In previous decisions arising from broad-ranging rulemaking proceedings, we have allocated responsibility for paying the intervenor compensation awards to the named respondent utilities based on each company's market share in the relevant industry. (D.96-08-040.) We follow that precedent here, but in the future it may be appropriate to use the allocation methodology approved prospectively in D.00-01-020.

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 November 14, 1999, the 75th day after TURN filed this compensation request and continuing until the utility makes full payment of the award.

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

Findings of Fact

1. TURN, a customer who has adequately shown undue financial hardship, has made a timely request for compensation for its contribution to D.99-07-015, in reopening this proceeding.

2. TURN made a substantial contribution to D.99-07-015.

3. TURN has requested an hourly rate for each of its attorneys that is considered market rate for individuals with comparable training and experience. The rate is set at a level that assumes overhead costs are included.

4. TURN attorneys Michel Florio, Theresa Mueller, and Bob Finkelstein, and consultant James Weil, have received their respective rates in previous proceedings and each rate is a reasonable rate as assigned. However, proof for a raise of \$15 per hour for Marcel Hawiger from that granted in previous proceedings was not sufficient. An increase of \$10 per hour for Hawiger, based on additional experience, is reasonable.

5. The miscellaneous costs incurred by TURN are reasonable.

6. TURN's productive, needed, and necessary participation resulted in an overall benefit that exceeded its costs.

7. TURN has appropriately reduced the number of hours for which it seeks compensation, but it is reasonable to further reduce the number of hours by 4 hours spent by Florio before the commencement of the proceeding, 1.5 for Mueller for the same reason, and 14.10 for Hawiger based on limited success in the market conditions portion of the proceeding.

8. The Respondents in this proceeding were PG&E, SDG&E, SoCalGas, Washington Water Power Company, and Southwest Gas Corporation. They did not oppose TURN's request for compensation.

9. It is reasonable that these companies should pay to TURN a pro rata share of the \$74,365.55 award based on the each company's market share in the California natural gas market as measured by Mdth delivered in 1998.

10. It is reasonable that each company should pay its share within 30 days of the effective date of this order plus 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 November 14, 1999 and continuing until full payment is paid.

Conclusions of Law

1. TURN has fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$74,365.55 for its contribution to D.99-07-015.
3. Respondents PG&E, SDG&E, SoCalGas, Washington Water Power Company, and Southwest Gas Corporation should pay to TURN a pro rata share of the \$74,365.55 award based on the each company's market share in the California natural gas market as measured by Mdth delivered in 1998. Each company should pay its share within 30 days of the effective date of this order plus 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 November 14, 1999 and continuing until full payment is paid.
4. This proceeding should be closed again.
5. This order should be effective today so that TURN may be compensated without necessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$74,365.55 for its contribution to Decision 99-07-015.
2. Respondents Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, Washington Water Power Company, and Southwest Gas Corporation shall pay to TURN a pro rata share of

the \$74,365.55 award based on the each company's market share in the California natural gas market as measured by Mdth delivered in 1998.

3. Each company shall pay its share within 30 days of the effective date of this order plus 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 November 14, 1999 and continuing until full payment is paid.

4. This proceeding is closed again.

This order is effective today.

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

LORETTA M. LYNCH
President

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

Commissioners