

Decision 88 02 027**ORIGINAL**

FEB 16 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SOUTHERN CALIFORNIA GAS COMPANY and )  
 PACIFIC LIGHTING GAS SUPPLY COMPANY )  
 to increase revenue under the )  
 consolidated adjustment mechanism )  
 to offset changed gas costs resulting )  
 from increases in the price of )  
 natural gas purchased from EL PASO )  
 NATURAL GAS COMPANY, TRANSWESTERN )  
 PIPELINE COMPANY, PACIFIC INTERSTATE )  
 TRANSMISSION COMPANY, and California )  
 sources; and to adjust revenues to )  
 recover the undercollection in the )  
 CAM Balancing Account. )

Application 82-09-12  
 (Filed September 8, 1982)

OPINIONSummary

This decision grants TURN its full compensation request of \$44,495.44 plus interest for its contributions to the decisions in this proceeding.

Background

On August 21, 1987, Toward Utility Rate Normalization (TURN) filed a petition for a finding of eligibility for compensation and an award of compensation in the amount of \$44,495.44 for its substantial contributions to Decisions (D.) 83-12-062, 84-10-040, 85-12-020, and 87-07-098 in Southern California Gas Company (SoCal) Application (A.) 82-09-12. TURN's request is composed of two components -- \$38,356.05 sought pursuant to Article 18.6 of the Commission's Rules (OII-100) for work performed in the various rehearing phases of this case subsequent to April 1983; and \$6,139.39 requested under Public Utilities (PU) Code Section 701 for work in the original reasonableness hearings in late 1982 and early 1983.

D.87-07-098 after almost five years of litigation, adopted TURN's position that SoCal had acted unreasonably when it purchased expensive Pacific Gas & Electric Company (PG&E) gas in January and February of 1982. TURN now requests a finding of eligibility and an award of compensation for its work through this combined pleading.

Eligibility for Compensation

Because of the very long and complex history of this proceeding, the question of eligibility for compensation must be addressed separately for two distinct time periods -- the original hearing phase in late 1982 and early 1983 that preceded the issuance of the OII 100 rules and the rehearing Phase during which OII 100 rules were effective. First we will discuss the Article 18.6 requirements for notice of intent, and then address the issue of eligibility as it relates to the earlier time period.

OII-100 Notice of Intent (Rule 76.23)

Rule 76.23 sets forth the following three requirements for a notice of intent to claim compensation filing:

(a) A showing that, but for the ability to receive compensation under these rules, participation or intervention in the proceeding may be a significant financial hardship for such participant. Such showing should address the factors set forth in Rule 76.25(a) (1) or (2). A summary description of the finances for the participant should distinguish between grant funds committed to specific projects and discretionary funds. If the Commission has determined that the participant has met its burden of showing financial hardship previously in the same calendar year, participant shall make reference to that decision by number to satisfy this requirement.

(b) In every case, a specific budget for the participation shall be filed showing the total compensation which the participant believes it may be entitled to, the basis for such estimate, and the extent of financial commitment to the participation. If at any time during the proceeding changes in the

issued, scope, or positions of parties cause a fluctuation of more than 20%, plus or minus, in the estimated budget, the participant shall file an amended budget and serve it on all parties.

(c) A statement of the nature and extent of planned participation in the proceeding as far as it is possible to set it out when the Notice of Intent to Claim Compensation is filed.

The Commission found in D.87-04-032 that TURN had met its burden of showing significant financial hardship for 1987. The requirement of Rule 76.23(a) has therefore been satisfied.

TURN's budget for this entire proceeding is \$44,495.44, as more fully described below under Itemization of Costs. That description complies with Rule 76.23(b).

The nature and extent of TURN's participation in this proceeding are provided below under Substantial Contribution.

In summary, TURN is clearly eligible for compensation in this proceeding under the OII-100 rules.

Eligibility for the Original Hearing Phase

Out of TURN's total time commitment, 67.0 hours were devoted to the original reasonableness hearings in late 1982 and early 1983, of which 40.25 are claimed for compensation. While this work pre-dated the adoption of the OII-100 compensation rules, TURN is nonetheless eligible for compensation under the CLAM doctrine (CLAM v. PUC (1979) 25 CAL. 3D 891). In that decision the court held that this Commission possesses equitable authority to award attorney fees in quasi-judicial reparation cases (Id. at 908).

TURN has previously received compensation for work performed prior to April 1983 in quasi-judicial reasonableness review proceedings such as this one. D.86-08-065 in Edison's A.82-03-04 and A.83-03-36 granted TURN compensation for pre-Article 18.6 work, under circumstances entirely parallel to this proceeding. In A.82-03-04 TURN had raised certain issues which

were deferred to Edison's 1983 reasonableness review, A.83-03-36. TURN ultimately prevailed on the merits and requested compensation for its work in 1982 which pre-dated OII-100, based on the CLAM decision and the fact that the issues litigated in that reasonableness review were primarily quasi-judicial in character. TURN was found eligible and awarded full compensation for its contribution. Here, the issue that was actually litigated was whether or not SoCal acted as a reasonably prudent utility would have, in purchasing gas from PG&E at the price paid. This type of inquiry is commonly performed by civil courts. Thus, this issue is much more "judicial" than "legislative". Because of this quasi-judicial nature, TURN's request comes within the CLAM precedent.

Finally, TURN has effectively combined its requests under OII-100 and Section 701 by patterning the request for fees after the requisites of Rule 76.26. As a result, TURN has provided detailed documentation of the claimed hours by subject matter and type of work performed.

#### Request for Compensation

##### Substantial Contribution

TURN's contribution to D.87-07-098 is clear on the face of the decision. However, a full appreciation of the extraordinary efforts which TURN undertook over a period of five years to achieve this result requires a review of the exceptional history of this proceeding.

The original reasonableness review hearings in A.82-09-12 consumed only one-and-a-half days, on November 8 and 9, 1982. During those hearings TURN and Staff Counsel for the Division of Ratepayers Advocates (DRA) (formerly Public Staff Division and Utilities Division) worked cooperatively to attempt to show through cross-examination of SoCal's witness that the purchase of the PG&E gas had been unreasonable. Both parties argued in their opening briefs that this purchase, as well as certain other costs, should

be disallowed. TURN also filed a short reply brief devoted exclusively to the issue of the PG&E purchases.

In D.83-10-001, the Commission expressed considerable dissatisfaction with SoCal's showing but nonetheless found all of the company's costs to be reasonable. TURN then applied for rehearing on the issue of the PG&E purchases and one other matter, arguing in part that the Commission had based its decision on an argument in SoCal's reply brief containing figures not properly in evidence.

D.83-12-062 granted TURN's request in part and ordered a rehearing limited to further briefs on the question of whether the evidence supported the argument in the company's reply brief. This kept the issue alive and represented TURN's first substantial contribution to the proceeding.

TURN was the only party that filed a brief in the first limited rehearing, on January 11, 1984. TURN argued that there were no facts in the record to support the shortfall in gas supplies alleged by the company.

On July 5, 1984, D.84-07-069 was issued after the first limited rehearing finding SoCal's gas costs reasonable.

Thereafter, TURN again applied for rehearing and simultaneously sought a writ of review from the California Supreme Court. TURN's arguments centered on the illegality of the reliance on data not in the record. The court stayed its consideration of the matter pending further Commission action.

D.84-10-040 granted TURN's second request for rehearing. This once more kept the issue alive, and represented another substantial contribution. Since the scope of the allowed rehearing was quite narrow, TURN filed a petition for modification seeking to broaden the rehearing to encompass additional issues. Following a prehearing conference D.85-12-020 was issued, which broadened the rehearing considerably beyond its original limited scope. This represented yet another substantial contribution by TURN.

The rehearing was finally held on February 3-7, and June 25 and 26, 1986. During these hearings TURN raised the issue of no CPUC approval for the extended PG&E contract. Additionally, considerable hearing time was consumed on the issue of an appropriate disallowance. ✓✓

The ALJ's proposed decision recommended a disallowance on the grounds advanced by TURN. However, after extensive negative comments by SoCal, TURN filed reply comments on the issue of disallowance which were incorporated into D.87-07-098 (pp. 8-9). These comments drew upon the record developed in both the original 1982 hearings and the 1986 rehearing. ✓

D.87-07-098 relied extensively on the evidence and argument presented by TURN, both as to the basic issue of reasonableness and with respect to the issue of disallowance. Therefore, we find that TURN made a substantial contribution to that decision. ✓✓

In the course of this proceeding TURN made substantial contributions to Decisions 83-12-062, 84-10-040, and 85-12-020, all of which were essential steps to D.87-07-098.

Itemization of Costs

Rule 76.26 states as follows with respect to requests for compensation:

"Such a request shall include a detailed description of hourly services and expenditures or invoices for which compensation is sought. This breakdown of services and expenses shall be related to specific issues..."

The following is a summary of TURN's requested compensation in this proceeding.

Attorney Fees

M. Florio

287.4 hours x \$150 = \$43,110.00

Summary of Hours

<u>Phase</u>	<u>Total</u>	<u>Claimed</u>
Original Hearing	67.00	40.25
1st Rehearing	21.50	15.90
Appeal	43.75	43.75
2nd Rehearing	171.75	171.75
Compensation, etc.	<u>15.75</u>	<u>15.75</u>
	319.75	287.40

Other Reasonable Costs

Postage Costs =	121.38
Copying Costs =	1,005.06
Attorney Expenses =	59.00
Court Filing Fee =	<u>200.00</u>
Total	\$44,495.44

TURN's attorney maintained detailed contemporaneous time records indicating the number of hours devoted to this proceeding. Due to the lengthy nature of the proceeding, this work can be segregated into several distinct phases. While in a general sense the issue was always the reasonableness of the PG&E gas purchases, the specific focus of TURN's work differed in the various phases.

The original hearing phase consisted of the initial reasonableness review hearings in November 1982, plus the related briefing which continued into January 1983. During this phase TURN also pursued certain other issues besides the PG&E purchases. In order to reflect this work on unrelated matters, TURN excluded 50% of the hours spent in preparation and briefing. TURN did not

adjust the time spent at the original hearing (1 1/2 days) because it was needed to cover the PG&E issue. Similarly, TURN did not adjust the reply brief time because that document addressed only the PG&E gas purchase issue. This work in the original hearing phase was essential to TURN's contribution to D.87-07-098.

The first rehearing phase encompassed TURN's application for rehearing of D.83-10-001 and the brief on limited rehearing. At this point the primary issue was whether D.83-10-001 was supported by the evidence. Since the first application for rehearing also addressed certain issues beyond the PG&E purchases, TURN excluded 40% of the time spent on that pleading.

The appeal phase included TURN's second application for rehearing (of D.84-07-069) and a simultaneous petition to the Supreme Court, as well as TURN's petition to modify the scope of the rehearing granted in D.84-10-040. During this phase the issue was whether D.84-07-069 had unlawfully relied upon facts not in evidence. TURN has included here all time and expenses related to the Court appeal for two reasons. First, the application for rehearing and the petition to the Court were essentially the same document, so no incremental time was devoted solely to the petition. Further, while the OII-100 rules are silent regarding the costs of seeking judicial review, both the Senate Bill-4 rules (Article 18.7, Rule 76.52(a)) and PU Section 1802(a) specifically include the fees and costs of obtaining judicial review within the definition of compensation. The only time and expenses exclusively related to the court action were 3.0 hours spent reviewing and responding to the Commission's motion to dismiss and a \$200 court filing fee.

The most time-consuming portion of this proceeding was the second rehearing phase, which began with the prehearing conference in late October 1985 and continued through the date of D.87-07-098. While DRA renewed its participation at this point, it was TURN that developed the argument that ultimately decided the



issue. Moreover, as in the original hearings, TURN actively cooperated with DRA to avoid duplication of time and effort.

Finally, TURN's summary of work includes 16.0 hours spent preparing this compensation pleading. Such time is compensable under Commission policy (D.86-04-047; D.86-07-009).

The other reasonable costs listed above are limited to actual costs incurred by TURN in the course of the proceeding. Postage and copying costs relate solely to the various pleadings which TURN filed in each phase of the case. These amounts reflect adjustments of 50% and 60% respectively for TURN's original opening brief and first application for rehearing, since those filings also covered certain other issues not addressed in this request. Attorney expenses consist of parking fees incurred by TURN's counsel while attending hearings or meetings related to the case. The Supreme Court filing fee is self-explanatory, and was also discussed previously.

The \$150 hourly rate proposed for Mr. Florio's time is his current base rate as approved in D.86-12-053, D.87-07-042, and Resolution ALJ-158. It is true that this rate level was first adopted for work performed by Mr. Florio in the fall of 1985 (D.86-12-053), before which time a \$125 rate prevailed. If a strict historical rate policy were to be applied, all of the hours expended prior to the start of the second rehearing phase in October 1985 would receive a lower hourly fee. Under the unique circumstances of this case, however, TURN submits that it should be granted the current \$150 rate for all of its hours, as a reward or enhancement for extraordinary perseverance.

There can be no doubt that TURN's efforts in this proceeding went far beyond the ordinary call of duty. No less than three separate times -- first rehearing, second rehearing/petition for writ of review, and petition for modification of scope of rehearing -- TURN went the extra mile and filed the additional pleading that kept the case alive.

The cost of a \$25 enhancement for the pre-1985 hours is about \$2,500 for SoCal's ratepayers, who will benefit by a \$3.6 million disallowance plus interest from 1982. In recognition of TURN's extraordinary efforts and skill level in this proceeding we will apply the current \$150 rate to all of TURN's hours.

Based on the discussions above, we will grant TURN the full amount of its compensation request, \$44,495.44, for its contribution to this proceeding. Since this decision was not issued within 75 days from the date of TURN's request, as required by Public Utilities Code Section 1804, we will allow interest on the award. Interest should be calculated in the same manner as the deferred account established in D.86-06-079 and should accrue from the 76th day after TURN's request was filed until payment of the award is made.

Finally, TURN is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division, therefore adequate accounting records and other necessary documentation must be maintained in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs incurred for which compensation may be claimed.

#### Findings of Fact

1. TURN filed a petition for finding of eligibility for compensation and an award of compensation in the amount of \$44,495.44 on August 21, 1987.

2. TURN was found eligible for compensation in 1987 by D.87-04-032.

3. An attorney fee of \$150 per hour was found reasonable for Mr. Florio in D.86-12-053.

4. TURN did prevail on the issue of the reasonableness of SoCal's gas purchases from PG&E.

5. TURN has previously received compensation for work performed prior to April 1983 in quasi-judicial reasonableness review proceedings such as this one.

6. Public Utilities Code Section 1804 requires compensation awards to be decided by the Commission within 75 days from the date of filing.

Conclusions of Law

1. TURN is eligible for compensation for its work in this proceeding for the years 1982 through 1987.

2. TURN's requested hourly fees are reasonable.

3. TURN should receive its full request for compensation for its work on the reasonableness of SoCal's gas purchases from PG&E.

4. SoCal should pay TURN interest on \$44,495.44 from the 76th day after the request was filed calculated in the same manner as the deferred account established in D.86-06-079.

5. The adopted compensation of \$44,495.44 plus interest as shown on page 7 of this decision is reasonable and should be awarded to TURN.

ORDER

IT IS ORDERED that Southern California Gas Company shall pay to Toward Utility Rate Normalization, within 10 days of the effective date of this decision, a compensation award of \$44,495.44 plus interest computed at the three month commercial paper rate from the 76th day after August 21, 1987 until paid.

This order becomes effective today.

Dated February 10, 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did  
not participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weiss, Executive Director

were deferred to Edison's 1983 reasonableness review, A.83-03-36. TURN ultimately prevailed on the merits and requested compensation for its work in 1982 which pre-dated OII-100, based on the CLAM decision and the fact that reasonableness reviews are primarily quasi-judicial in character. TURN was found eligible and awarded full compensation for its contribution.

Finally, TURN has effectively combined its requests under OII-100 and Section 701 by patterning the request for fees after the requisites of Rule 76.26. As a result, TURN has provided detailed documentation of the claimed hours by subject matter and type of work performed.

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Finally, TURN is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division, therefore adequate accounting records and other necessary documentation must be maintained in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs incurred for which compensation may be claimed.

Findings of Fact

1. TURN filed a petition for finding of eligibility for compensation and an award of compensation in the amount of \$44,495.44 on August 21, 1987.
2. TURN was found eligible for compensation in 1987 by D.87-04-032.
3. An attorney fee of \$150 per hour was found reasonable for Mr. Florio in D.86-12-053.
4. TURN did prevail on the issue of the reasonableness of SoCal's gas purchases from PG&E.
5. TURN has previously received compensation for work performed prior to April 1987 in quasi-judicial reasonableness review proceedings such as this one.
6. Public Utilities Code Section 1804 requires compensation awards to be decided by the Commission within 75 days from the date of filing.

Conclusions of Law

1. TURN is eligible for compensation for its work in this proceeding for the years 1982 through 1987.
2. TURN's requested hourly fees are reasonable.
3. TURN should receive its full request for compensation for its work on the reasonableness of SoCal's gas purchases from PG&E.

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4. SoCal should pay TURN interest on \$44,495.44 from the 76th day after the request was filed calculated in the same manner as the deferred account established in D.86-06-079.

5. The adopted compensation of \$44,495.44 plus interest as shown on page 7 of this decision is reasonable and should be awarded to TURN.

ORDER

IT IS ORDERED that Southern California Gas Company shall pay to Toward Utility Rate Normalization, within 10 days of the effective date of this decision, a compensation award of \$44,495.44 plus interest computed at the three month commercial paper rate from the 76th day after August 21, 1987 until paid.

This order becomes effective today.

Dated FEB 10 1988, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did not  
participate.