

ORIGINAL

Decision 88-02-056 February 24, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY to)
revise its rates under the Consoli-)
dated Adjustment Mechanism.)

(U 904 G)

Application 86-03-058
(Filed March 28, 1986)

Application of PACIFIC GAS AND)
ELECTRIC COMPANY for authority to)
revise its gas rates and tariffs)
effective April 1, 1986, under the)
Gas Adjustment Clause.)

(U 39 G) Gas

Application 86-03-030
(Filed March 17, 1986)

In the Matter of the Application of)
SAN DIEGO GAS & ELECTRIC COMPANY)
for authority to decrease its gas)
rates and charges pursuant to its)
filed Consolidated Adjustment)
Mechanism (CAM).)

(U 902-G)

Application 86-04-027
(Filed April 16, 1986)

Investigation on the Commission's)
own motion into the rates and)
operations of the Southern)
California Gas Company.)

I.86-03-035
(Filed March 19, 1986)

Investigation on the Commission's)
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operations of the Pacific Gas and)
Electric Company.)

I.86-03-036
(Filed March 19, 1986)

Investigation on the Commission's)
own motion into the rates and)
operations of the San Diego Gas &)
Electric Company.)

I.86-03-037
(Filed March 19, 1986)

O P I N I O N

I. Introduction

By a Request for Compensation filed December 5, 1986, Toward Utility Rate Normalization (TURN) alleges that it made a substantial contribution to Decision (D.) 86-06-006 in Application (A.) 86-03-030 Pacific Gas and Electric Company (PG&E), D.86-08-082, and D.86-10-032 in A.86-03-058 et al. The request is for \$71,166 based on a total of approximately 361 compensable hours. Responses to the TURN filing were made by both PG&E and Southern California Gas Company (SOCAL).

The threshold issue in this type of request is whether or not the party made substantial contributions to our decision and if so, then how many and in what areas. The fee level, number of compensable hours, and degree of success constitute other major issues.

The general scheme of this order is to first arrive at a base award and then make positive and/or negative adjustments to the award by taking into consideration various factors discussed below. After determining that a party has made a "substantial contribution" to a particular issue(s), the elements that make up the base award are (1) fee level, (2) compensable hours, and (3) degree of success.

The factors that can lead to adjustments to the base award are grouped according to the most logical element to which the adjustment could be applied and are listed below:

A. Fee Level

1. The experience, reputation, and ability of the attorney.
2. The skill required to perform the legal service properly.
3. Customary fee.

B. Compensable Hours

4. The time and labor required (reasonable number of hours to present the case).
5. Efficiency of presentation.
6. Novelty and difficulty of the issues.
7. Duplication of effort.

C. Degree of Success

8. Dollar amount involved.
9. Degree of importance of the issue.
10. The results obtained (partial or complete success on the issue).

Of course, these factors are not to be applied in a rigid manner. Some factors will apply to particular elements at times and at other times the factors will be considered in adjusting the overall award. These final adjustments can logically take the form of flat dollar amounts, percentage increases/decreases to either the base award or number of hours, and finally the hourly fee can be enhanced or reduced.

II. D.86-06-006

A. Substantial Contribution

The first phase of A.86-03-030 resulted in D.86-06-006, which established a new gas revenue requirement and adopted an interim rate design for PG&E. TURN alleges that its participation in the proceeding substantially contributed to our decision in several different areas. The first contribution was the adoption of its proposals regarding the unavoidable fixed demand charge for UEG customers. In the area of rate design, TURN advocated a rate decrease for residential customers and further proposed that any

supplier rate reductions be passed through on an equal cents-therm basis to all customer classes. Finally, TURN proposed that we adopt a smaller revenue requirement by imputing lower long-term gas costs than PG&E or any other party had forecast.

In its response PG&E acknowledged that TURN had made the claimed substantial contributions except for the revenue requirement issue. PG&E believes that its own market actions did more than TURN's showing in reducing the long-term gas costs. The resulting PG&E recommendation is that the 52 hours which TURN allocates to this issue be disallowed.

We find that TURN made substantial contributions on all claimed issues. Specifically regarding the issue of the discrepancy between the cost of spot-market gas and long-term gas supplies, we adopted TURN's factual contention that \$.95/MMBtu is an unreasonably excessive premium for sales gas compared to spot market gas. Although it may well have been PG&E's actions which actually lowered the long-term gas costs, it was TURN's participation which led to our discussion in the decision.

B. Hourly Fee

We have previously found that \$150 per hour is a reasonable hourly fee for Mr. Florio for work performed in 1986. We will continue to use this hourly fee for this decision also.

C. Compensable Hours

TURN attorney Florio submitted detailed time sheets setting forth the number of hours spent worked and the number of hours claimed. The time has been allocated to issues where practical with work descriptions showing the type of work performed in general. No travel time was claimed in this proceeding and the accounting for hours claimed is satisfactory. We will therefore allow all of the claimed hours, except for the 29 hours allocated to the gas cost issue. We will allow one-half of the 29 hours, reflecting the fact that although TURN's recommendation to impute lower gas costs was not adopted, we did adopt TURN's contention

that a \$.95 per MMBtu premium for sales gas over spot gas is excessive. Thus, we will grant compensation for 66.5 hours (81 hours claimed minus one-half of 29 hours).

D. Fee Award Calculation

1. Base Fee Award

The preliminary award calculation is the result of multiplying the hourly fee (\$150) and the reasonable number of hours (66.5) as shown in the table below:

$$66.5 \text{ hours} \times \$150 = \$9,975$$

2. Adjustments

The adjustments to the base fee award will generally consider the intervenor's degree of success and the efficiency of his or her case presentation.

In this particular case there will be an enhancement of \$25 per hour applied to the base award because of the extreme efficiency of the case presentation in that Mr. Florio performed both as an expert witness and as the attorney. TURN requested a \$25 per hour enhancement for all compensable hours consistent with our previous awards for the dual role performance. PG&E does not contest this requested enhancement.

The final fee calculation is shown below:

66.5 hours x \$175	=	\$11,637.5
Plus other reasonable expenses	=	209
Total Award		\$11,846.5

III. D.86-08-082 and D.86-10-032

A. Substantial Contribution

After the hearings were complete on the interim phase of A.86-06-030 (PG&E), we consolidated the second phase of A86-06-006 with the SOCAL spring Consolidated Adjustment Mechanism (CAM) (A.86-03-058), San Diego Gas & Electric Company (SDG&E) spring CAM (A.86-04-027) and the three investigations (I.86-03-035,

I.86-03-036, and I.86-03-037). The consolidation was for the purpose of arriving at a revenue requirement for SOCAL and SDG&E, and a short-term rate design for all three gas utilities. These consolidated proceedings resulted in D.86-08-082 and D.86-10-032. The overlap of issues among different utilities raises a new issue regarding attorney fee awards, namely the allocation of the cost of any award to the involved utilities.

Since D.87-10-032 was a decision which modified and clarified the previous decision D.86-08-082, the compensation request for both decisions can be viewed as one proceeding. TURN's filing is also structured in this manner. The TURN filing alleges substantial contribution in the following areas:

1. SOCAL revenue requirement.
2. Wholesale rate design.
3. UEG rates.
4. Indexing industrial rates to gas costs.
5. Residential rate structure.

SOCAL and PG&E filed responses to the TURN request.

Neither PG&E nor SOCAL contests the allegations of substantial contribution on any of the issues listed above. SOCAL contests the requested fee level of \$150 per hour enhanced to \$175 per hour. Both PG&E and SOCAL differ with TURN and each other over the proper allocation of the costs of any award to the involved utilities. After review of the decisions, we agree with the utilities and TURN that TURN has met the threshold standard of making a substantial contribution to the decisions on each of the designated issues.

B. Hourly Fee

We will again use \$150 as a reasonable hourly fee for Mr. Florio for work performed in 1986.

There are no facts in this case which would lead to either a positive or negative adjustment to the hourly fee level. The only possible issue is whether the fact that the TURN attorney performed as both the attorney and expert witness is sufficient to

enhance the fee by an additional \$25 for all claimed hours. In this case, we think not. There was no accounting of the hours spent as a witness versus as an attorney, nor any showing as to the success in the case due to testimony versus just legal participation. Rather than an enhancement of the hourly fee for all allowed hours, we will recognize the efficiency of Mr. Florio performing both as a witness and as an attorney by enhancing the hourly fee only for a certain amount of hours pertaining to a limited set of issues later in this decision.

C. Compensable Hours

With the finding of substantial contribution on all issues as requested and our prior discussion on TURN's base fee level, we will now arrive at a base fee award. The TURN request for compensable hours by issue is shown below:

Gas Purchasing Issue		74.25
Revenue Requirement		22.25
Rate Design Issues		
Rate Design Generally	99.5	
Wholesale Rates	25.25	
UEG	3.5	
Residential Rates	<u>.25</u>	
		128.5
Common Hours		
Review & Discovery	9.0	
Scheduling & PHC	2.75	
Travel (1/2 actual)	4.75	
Briefing Preparation	33.0	
Reading Briefs	3.75	
PUC Conference	<u>1.75</u>	
		<u>55.0</u>
Total Claimed		279.75

The above itemization reveals an issue that we have not specifically addressed before, which is the compensation for 1.75 hours for attending a Commission conference. We presume that this conference was the conference in which we issued the decision under consideration. Recognizing that no public participation is allowed at the conferences, and that it is the written decisions of the Commission itself, not the public statements of individual

commissioners, to which intervenors must contribute, we believe that our discussion at the conference is unlikely to assist an intervenor in contributing to our decisions. To allow time spent attending Commission meetings as compensable, we would require some showing that the discussion at the meeting, for example, laid the groundwork for a subsequent successful application for rehearing. There has been no such showing in this instance. We will therefore not allow the 1.75 hours.

With our finding of substantial contribution on all issues claimed, and the above minor disallowance, we will use 278 hours for the base award calculation. We note once again that TURN's attorney submitted detailed time sheets setting forth the number of hours claimed. The hours claimed were allocated to issues where practical and work descriptions were also provided. One-half of the travel time was claimed in accordance with our present policy. The accounting for the claimed hours is satisfactory.

D. Fee Award Calculation

1. Base Fee Award

With the \$150 hourly fee level, the resulting base award is then

$$278 \text{ hours} \times \$150/\text{hr.} = \$41,700$$

2. Adjustments

The first issue to be considered is the "gas purchasing" issue which relates to the difference between spot gas prices and long-term gas commodity prices. TURN offered the same testimony in both the PG&E interim proceeding and the consolidated proceedings, with the same degree of success. In the consolidated proceeding TURN claims a total of 74.5 hours of which 19 hours were for "preparation". Since TURN's participation in the two proceedings was the same, we believe that the preparation hours are excessive. We will reduce the claimed hours for this issue by 8.25 hours (approximately 50% of 19 hours) from 74.25 to 66.0 hours. Of the

remaining 66.0 hours on this issue, we will allow 33 hours by applying the same 50% degree of success adjustment that we applied in the PG&E case on this same issue with the same result.

Next, we address the revenue requirement issues relating to SOCAL and SDG&E. The issue concerned whether SOCAL could receive a rate increase larger than that noticed to its customers. The decision adopted the TURN position. The result was a saving to ratepayers at that point in time of about \$43 million. The issue this presents is whether the degree of success or the importance of the issue warrants an enhancement of the basic award. In other words, if one attorney expended 23 hours on an issue and was successful in the amount of \$2 million and another attorney expends 23 hours on a different issue and is successful in the amount of \$40 million, should the two attorneys receive the same award? We think not. We will recognize exceptional results by enhancing the basic awards when warranted, realizing that this will be a subjective judgment on our part. By the same token, fees can be reduced where the results are small and/or the issue relatively insignificant.

Because of the dollar size of the issue (\$43 million) and TURN's degree of success, we will enhance the award on this issue by approximately 25% (5.75 hours) from 22.25 hours to 28 hours.

In the area of rate design, we see no facts that lead to either a negative or positive adjustment to the base award. TURN's substantial contribution has already been acknowledged. Its overall degree of success was neither so great or small in relation to the number of hours claimed to warrant an adjustment.

It is at this point that we will recognize the efficiency of presentation afforded by Mr. Florio performing a dual role -- attorney and witness. We have reviewed the prepared testimony of Mr. Florio and find that it pertained exclusively to rate design issues. We will therefore allow the \$25 per hour enhancement to the 128.5 hours allocated to rate design issues.

Finally, we will make no adjustment to the number of common hours allowed. It continues to be our policy that where the party makes a substantial contribution on a majority of the issues on which it participates then we will allow all common hours

E. Fee Award

With the fee level and compensable hours issues resolved the following table will develop the award for these two decisions (not including compensation requests costs):

Gas Purchasing Issue		33.00
Revenue Requirement		28.00
Rate Design Issues		
Rate Design Generally	99.5	
Wholesale Rates	25.25	
UEG	3.5	
Residential Rates	<u>.25</u>	
		128.5
Common Hours		
Review & Discovery	9.0	
Scheduling & PHC	2.75	
Travel (1/2 actual)	4.75	
Briefing Preparation	33.0	
Reading Briefs	<u>3.75</u>	
		<u>53.25</u>
Total Hours Allowed		242.75
Hourly Fee Level		<u>\$150.00</u>
Sub-total		\$36,412.5
Efficiency Adjustment		
\$25 x 128.5 hours		3,213
Other Reasonable Expenses		
Copying		390
Postage		189
Attorney Travel & Expenses		<u>1,124</u>
Total		\$41,328.5

IV. Compensation Costs

TURN filed its compensation request as one document in these overlapping and consolidated proceedings. No party contested the reasonableness of the request of \$6,123 based on 38 hours at \$150 per hour, plus incidental costs. The amount appears

reasonable in light of the complexity of the filing and will be awarded as requested.

V. Allocation of Costs

The final issue to be decided in this order concerns the allocation of payment of the award to the involved utilities. First, it is reasonable to eliminate SDG&E from consideration. There were no issues that pertain to SDG&E exclusively. In economic terms either the incremental or the decremental cost of TURN's participation in these proceedings applicable to SDG&E is zero. We are therefore left with the task of allocating the costs between PG&E and SOCAL.

The cost elements of this decision are shown below:

- | | | |
|----|-----------------|-----------------------------|
| 1. | \$11,846.5 | D.86-06-006 |
| 2. | \$41,328.5 | D.86-08-082 and D.86-10-032 |
| 3. | <u>\$ 6,123</u> | Common Compensation Costs |
| | \$59,298 | Total Award |

Neither the amount of dollars involved nor the issues warrant a very complicated allocation methodology. The two most logical methods would be to base the allocation on either sales or revenues. Both methods produce very similar results, with the allocation based on sales being slightly more favorable to SOCAL. We will use a method based on sales because SOCAL will be paying a portion of the compensation costs associated with D.86-06-006 (PG&E only). The results are shown below:

PG&E	\$11,846.5
	<u>21,054.2</u>
	\$32,900.7
SOCAL	\$26,397.3
SDG&E	\$0

Findings of Fact

1. By a request filed December 5, 1986, TURN seeks an award of compensation pursuant to Rule 76.56 of the Rules of Practice and Procedure in the amount of \$71,165.51 for its substantial contributions made to D.86-06-006, D.86-08-082, and D.86-10-032.

2. TURN has made substantial contributions to the decisions noted above as discussed in the opinion.

3. TURN was found eligible for compensation for work performed in 1986 by D.86-02-039.

4. An hourly attorney fee rate of \$150 for Mr. Florio was found reasonable in D.86-12-053.

5. An award for attorney's fees as modified in the opinion in the amount of \$59,298 plus interest is reasonable.

6. The burden of the fee award is reasonably allocated to the appropriate utilities as described in the opinion.

Conclusions of Law

1. TURN has complied with the rules pertaining to attorneys' fee awards.

2. TURN should be awarded \$59,298 for its substantial contributions to D.86-06-006, D.86-08-082, and D.86-10-032.

3. PG&E should be ordered to pay TURN \$32,900.70 plus interest computed from the 76th day following December 5, 1986.

4. SOCAL should be ordered to pay TURN \$26,397.30 plus interest computed from the 76th day following December 5, 1986.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall pay to Toward Utility Rate Normalization (TURN), within 10 days of the effective date of this decision, a compensation award of \$32,900.70 plus interest computed at the three-month commercial paper rate from the 76th day after December 5, 1986, until paid.

2. Southern California Gas Company shall pay to TURN, within 10 days of the effective date of this decision, a compensation award of \$26,397.30 plus interest computed at the three-month commercial paper rate from the 76th day after December 5, 1986, until paid.

This order is effective today.

Dated February 24, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.

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

Victor Weisser
Victor Weisser, Executive Director

AB

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With our finding of substantial contribution on all issues claimed, and the above minor disallowance, we will use 278 hours for the base award calculation. We note once again that TURN's attorney submitted detailed time sheets setting forth the number of hours claimed. The hours claimed were allocated to issues where practical and work descriptions were also provided. One-half of the travel time was claimed in accordance with our present policy. The accounting for the claimed hours is satisfactory.

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The first issue to be considered is the "gas purchasing" issue which relates to the difference between spot gas prices and long-term gas commodity prices. TURN offered the same testimony in both the PG&E interim proceeding and the consolidated proceedings, with the same degree of success. In the consolidated proceeding TURN claims a total of 74.5 hours of which 19 hours were for "preparation". Since TURN's participation in the two proceedings was the same, we believe that the preparation hours are excessive. We will reduce the claimed hours for this issue by 8.25 hours (approximately 50% of 19 hours) from 74.25 to 66.0 hours. Of the

remaining 66.0 hours on this issue, we will allow 33 hours by applying the same 50% degree of success adjustment that we applied in the PG&E case on this same issue with the same result.

Next, we address the revenue requirement issues relating to SOCAL and SDG&E. The issue concerned whether SOCAL could receive a rate increase larger than that noticed to its customers. The decision adopted the TURN position. The result was a saving to ratepayers at that point in time of about \$43 million. The issue this presents is whether the degree of success or the importance of the issue warrants an enhancement of the basic award. In other words, if one attorney expended 23 hours on an issue and was successful in the amount of \$2 million and another attorney expends 23 hours on a different issue and is successful in the amount of \$40 million, should the two attorneys receive the same award? We think not. We will recognize exceptional results by enhancing the basic awards when warranted, realizing that this will be a subjective judgment on our part. By the same token, fees can be reduced where the results are small and/or the issue relatively insignificant.

Because of the dollar size of the issue (\$43 million) and TURN's degree of success, we will enhance the award on this issue by approximately 25% (5.75 hours) from 22.25 hours to 28 hours.

In the area of rate design, we see no facts that lead to either a negative or positive adjustment to the base award. TURN's substantial contribution has already been acknowledged. Its overall degree of success was neither so great or small in relation to the number of hours claimed to warrant an adjustment.

It is at this point that we will recognize the efficiency of presentation afforded by Mr. Florio performing a dual role -- attorney and witness. We have reviewed the prepared testimony of Mr. Florio and find that it pertained exclusively to rate design issues. We will therefore allow the \$25 per hour enhancement to the 128.5 hours allocated to rate design issues.

Finally, we will make no adjustment to the number of common hours allowed. It continues to be our policy that where the party makes a substantial contribution on a majority of the issues on which it participates then we will allow all common hours

E. Fee Award

With the fee level and compensable hours issues resolved the following table will develop the award for these two decisions (not including compensation requests costs):

Gas Purchasing Issue		33.00
Revenue Requirement		28.00
Rate Design Issues		
Rate Design Generally	99.5	
Wholesale Rates	25.25	
UEG	3.5	
Residential Rates	<u>.25</u>	
		128.5
Common Hours		
Review & Discovery	9.0	
Scheduling & PHC	2.75	
Travel (1/2 actual)	4.75	
Briefing Preparation	33.0	
Reading Briefs	<u>3.75</u>	
		<u>53.25</u>
Total Hours Allowed		242.75
Hourly Fee Level		<u>\$150.00</u>
Sub-total		\$36,412.5
Efficiency Adjustment		-
\$25 x 128.5 hours		3,213
Other Reasonable Expenses		
Copying		390
Postage		189
Attorney Travel & Expenses		<u>1,124</u>
Total		\$41,328.5

IV. Compensation Costs

TURN filed its compensation request as one document in these overlapping and consolidated proceedings. No party contested the reasonableness of the request of \$6,123 based on 38 hours at \$150 per hour, plus incidental costs. The amount appears reasonable in light of the complexity of the filing and will be awarded as requested.

V. Allocation of Costs

The final issue to be decided in this order concerns the allocation of payment of the award to the involved utilities. First, it is reasonable to eliminate SDG&E from consideration. There were no issues that pertain to SDG&E exclusively. In economic terms either the incremental or the decremental cost of TURN's participation in these proceedings applicable to SDG&E is zero. We are therefore left with the task of allocating the costs between PG&E and SOCAL.

The cost elements of this decision are shown below:

1. \$11,846.5 D.86-06-006
2. \$41,328.5 D.86-08-082 and D.86-10-032
3. \$ 6,123 Common Compensation Costs
- \$59,298 Total Award

Neither the amount of dollars involved nor the issues warrant a very complicated allocation methodology. The two most logical methods would be to base the allocation on either sales or revenues. Both methods produce very similar results, with the allocation based on sales being slightly more favorable to SOCAL. We will use a method based on sales because SOCAL will be paying a portion of the compensation costs associated with D.86-06-006 (PG&E only). The results are shown below:

PG&E	\$11,846.5
	<u>21,054.2</u>
	\$32,900.7

SOCAL \$26,397.3

SDG&E \$0

Findings of Fact

1. By a request filed December 5, 1986, TURN seeks an award of compensation pursuant to Rule 76.56 of the Rules of Practice and Procedure in the amount of \$71,165.51 for its substantial contributions made to D.86-06-006, D.86-08-082, and D.86-10-032.
2. TURN has made substantial contributions to the decisions noted above as discussed in the opinion.
3. TURN was found eligible for compensation for work performed in 1986 by D.86-02-039.
4. An hourly attorney fee rate of \$150 for Mr. Florio was found reasonable in D.86-12-053.
5. An award for attorney's fees as modified in the opinion in the amount of \$59,298 plus interest is reasonable.

6. The burden of the fee award is reasonably allocated to the appropriate utilities as described in the opinion.

Conclusions of Law

1. TURN has complied with the rules pertaining to attorneys' fee awards.

2. TURN should be awarded \$59,298 for its substantial contributions to D.86-06-006, D.86-08-082, and D.86-10-032.

3. PG&E should be ordered to pay TURN \$32,900.70 plus interest computed from the 76th day following December 5, 1986.

4. SOCAL should be ordered to pay TURN \$26,397.30 plus interest computed from the 76th day following December 5, 1986.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall pay to Toward Utility Rate Normalization (TURN), within 10 days of the effective date of this decision, a compensation award of \$32,900.70 plus interest computed at the three-month commercial paper rate from the 76th day after December 5, 1986, until paid.

2. Southern California Gas Company shall pay to TURN, within 10 days of the effective date of this decision, a compensation award of \$26,397.30 plus interest computed at the three-month commercial paper rate from the 76th day after December 5, 1986, until paid.

This order is effective today.

Dated FEB 24 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.