

ALJ/BTC/lrq

ORIGINAL

Decision 89 05 072 MAY 26 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Southern California Edison Company )  
for authority to increase rates )  
charged by it for electric service. )  
(Electric) (U 338 E) )

Application 86-12-047  
(Filed December 26, 1986)

Order Institution Investigation into )  
the rates, charges, and practices of )  
the Southern California Edison )  
Company. )

I.87-01-017  
(Filed January 14, 1987)

OPINION ON ELIGIBILITY AND REQUEST FOR COMPENSATION

On October 29, 1987, Toward Utility Rate Normalization (TURN) filed a "Request for Finding of Eligibility for Compensation" for its participation in this proceeding. The request is made under Rule 76.54 of the Commission's Rules of Practice and Procedure.

Rule 76.54 requires filing of a request for eligibility within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. TURN's request was filed within 45 days after the close of the record. Thus, TURN's filing is timely.

Southern California Edison Company (Edison) responded to TURN's request on November 20, 1987. Edison did not specifically oppose TURN's request, but it commented on certain elements of the filing.

TURN filed its "Request for Compensation" on February 18, 1988. On March 21, Edison filed a response opposing much of TURN's request. TURN replied to Edison's response on March 29, 1988.

We will address the request for finding of eligibility and the request for compensation separately.

I. The Request for Finding of Eligibility for Compensation

Rule 76.54(a) sets out four requirements for a request for finding of eligibility:

- "(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds....;
- "(2) A statement of issues that the customer intends to raise in the hearing or proceeding;
- "(3) An estimate of the compensation that will be sought; and
- "(4) A budget for the customer's presentation."

A. Significant Financial Hardship

Rule 76.54(a)(1) eliminates the need for redundant showings that participation in the proceeding will pose a significant financial hardship for the customer:

"If the customer has met its burden of showing financial hardship in the same calendar year, ...the customer shall make reference to that decision by number to satisfy this requirement...."

TURN states that the Commission found in D.87-04-032 that it met its burden of showing significant financial hardship for 1987. The hearings in this proceeding that are the subject of this request took place in 1987. Thus, TURN has met the requirement of Rule 76.54(a)(1).

B. Statement of Issues

Rule 76.54(a)(2) requires the party to submit a statement of issues that the party intends to raise. TURN had already completed its expected participation in this proceeding at the time it filed its request. TURN's testimony and briefs concentrated on

issues related to the proposed residential customer charge and the proper determination of marginal customer costs for purposes of revenue allocation. TURN therefore meets this requirement by referring to the issues that it actually raised in this proceeding.

**C. Estimate of the Compensation**

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. Again, TURN refers to the actual time it spent participating in the forecast phase of this case, multiplied by the hourly compensation that TURN seeks for its attorney in its request for compensation. In addition, TURN's estimate includes expert witness fees and other expenses. The total estimate is \$20,000.

**D. Budget**

Rule 76.54(a)(4) requires a budget for the party's presentation. Since TURN is viewing its participation retrospectively, it refers to its estimate of the compensation it will seek as its budget. The resulting budget is \$20,000.

**E. Common Legal Representative**

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal representative is appropriate. Under Rule 76.55, our decision on the request for eligibility may designate a common legal representative. No party commented on the appropriateness of a common legal representative, and we find no need to designate such a representative in this proceeding.

**F. Conclusion**

We have determined that TURN has met the four requirements of Rule 76.54(a). In addition, no party has responded to TURN's request or raised the issue of the appropriateness of a common legal representative. Therefore, TURN is eligible for compensation for its participation in this case.

## II. The Request for Compensation

TURN's Request for Compensation seeks \$19,965.83 for its substantial contributions to D.87-12-066.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

"Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

The 30-day deadline for filing the request for compensation under Rule 76.56 is ambiguous, but we have interpreted this rule to allow filings within 30 days of either the issuance of the final order or decision in the proceeding or the decision finding the customer eligible for compensation (D.86-01-034, D.86-01-035). In this case, TURN's request came more than 30 days after the issuance of D.87-12-066, but since the decision on TURN's request for eligibility is part of today's decision, the request is timely.

### A. TURN's Position

TURN asserts that it made a substantial contribution to D.87-12-066 on two issues, marginal customer costs and the residential customer charge.

On the marginal customer costs issue, TURN states that it was the only party to advocate calculating marginal customer costs for residential ratepayers by using a weighted average of incremental customer costs and decremental customer costs. TURN also points out that the Commission adopted a calculation of marginal customer costs based on the position of the Public Staff Division (now the Division of Ratepayer Advocates (DRA)) as a proxy

for the weighted average approach supported by TURN, modified to exclude the costs of transformers, as TURN advocated. TURN believes that its contribution on this issue was substantial.

TURN opposed the joint recommendation of Edison and DRA to replace the current minimum bill with a customer charge. The Commission declined to adopt the proposed residential customer charge, TURN believes, because of its substantial contribution on this issue.

**B. Edison's Response**

Edison argues that TURN did not make a substantial contribution on the marginal customer costs issue. D.87-12-066 points out that TURN did not make a direct showing on marginal customer costs, and that most of TURN's proposed rebuttal testimony was not received in evidence. The decision described TURN's position as an "endorsement of the incremental/decremental approach unsupported by any direct evidence on the calculation of those costs" (D.87-12-066, mimeo. p. 238). In Edison's view, TURN's participation on this issue did not reach the level of a substantial contribution.

Edison also notes that TURN's contribution on the residential customer charge was merely an echo of the Commission's decision in the general rate case of Pacific Gas and Electric Company (PG&E). The Commission's decision relied on the PG&E decision rather than on TURN's contentions in arriving at the resolution of this issue, according to Edison. Edison believes that TURN should receive no more than half its requested compensation on this issue.

**C. TURN's Reply**

TURN responds to Edison's arguments on the marginal customer costs issue by pointing out that the Commission endorsed its position in the decision, and that TURN was the only party in the proceeding to advocate this position.

Similarly, TURN opposed the customer charge proposed by Edison and DRA, and TURN presented evidence showing the large increases that imposition of a customer charge would cause for Edison's smallest customers. These efforts would not have been necessary if the Commission had merely followed the precedent of the PG&E case, TURN argues.

D. Discussion

Rule 76.58 requires the Commission not only to determine whether TURN made a substantial contribution to D.87-12-066, but also to describe that substantial contribution and to set the amount of the compensation to be awarded. According to Rule 76.52(g), an intervenor has made a "substantial contribution" when:

"...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 had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

Thus, the threshold issue is whether the party made a substantial contribution to our decision and, if so, on what issues. If a party has made a substantial contribution on a certain issue, the elements that make up the award are the fee level, the number of compensable hours, and the degree of success.

The fee award may also be adjusted in variety of ways. The fee level may be adjusted by the experience, reputation, and ability of the attorney; the skill required to perform the legal service properly; or the customary fee for comparable services. The number of compensable hours may be adjusted by the time and labor required to present the case; the efficiency of the presentation; the novelty and difficulty of the issue; or the duplication of effort involved in presenting the party's position. In considering the degree of the party's success, we consider the

amount of money involved, the importance of the issue, and whether the party achieved partial or complete success on the issue.

We will consider these elements in evaluating TURN's claim.

1. Marginal Customer Costs

TURN has overstated its role in affecting our decision on marginal customer costs in D.87-12-066. TURN failed to present any direct testimony to support its position, and much of its rebuttal testimony was not admitted into evidence. As we mentioned in D.87-12-066, TURN's approach to this case left us with an "endorsement of the incremental/decremental approach unsupported by any direct evidence on the calculation of those costs."

TURN submitted two pieces of written testimony on this issue. The first, Exhibit (Ex.) 82, was a copy of excerpts from earlier testimony presented in another proceeding by TURN's expert, and all of the exhibit but one question and answer was stricken in this proceeding. Ex. 117 was TURN's rebuttal testimony, and, as we have mentioned, nearly half of the testimony was stricken as an unfair attempt to make an affirmative showing during the rebuttal phase.

In addition, we found that TURN's cross-examination of other witnesses added little to our resolution of this issue.

Nevertheless, we acknowledge that TURN stood alone among the active parties in supporting the incremental/decremental approach to calculating marginal customer costs that we adopted in D.86-08-083. Although we may have affirmed our earlier "final conclusion" even without TURN's participation, TURN's contribution in this respect may be characterized as substantial.

It may be apparent from the preceding discussion that we believe that the number of compensable hours should be reduced from TURN's request. TURN's actual contribution on this issue, referring us to our earlier decision, could have been accomplished very quickly, in short testimony or in a brief. The novelty or

difficulty of repeating our position on an issue already thoroughly litigated is obviously low. In addition, TURN's request on the marginal customer cost issue includes many hours that were not related to its specific contribution to our decision.

TURN's degree of success on this issue was limited by the narrow scope of its presentation. Because it failed to present direct testimony on implementing the incremental/decremental approach in this case, we were forced to rely on estimates submitted by DRA, with minor modifications suggested by TURN.

We will allow as compensable hours those hours directly related to the preparation and presentation of the rebuttal testimony and to the briefing on this issue. Of the 64.6 hours claimed for this issue, we will allow compensation for 39.7 hours. Because of TURN's limited success on this issue, however, we will reduce the award by 50%.

TURN also requests recovery of the fees it paid its witness for his testimony on marginal customer costs. As we have mentioned, much of this testimony was stricken, and we will reduce the recovery accordingly. Also, we believe that some reduction is appropriate, since, in addition to the 15 hours requested for its expert, TURN requests recovery for about seven hours of its attorney's time for editing the expert's testimony. We will allow for recovery for ten hours at the expert's fee of \$100 per hour, reduced by 50% to reflect TURN's limited success on this issue.

## 2. Proposed Customer Charge

TURN's contribution on the customer charge issue is clearer. Although our decision on this issue paralleled our treatment of this issue in PG&E's general rate case (D.86-12-091), TURN was instrumental in showing the effects of the proposed customer charge on specific groups of Edison's customers. As in the PG&E case, we endorsed the principle of the customer charge, but left the minimum bill in place because of the disproportionate effect that a customer charge would have on many customers. We



conclude that TURN's contribution on this issue was substantial. We will allow compensation for the 41.7 hours TURN claimed for this issue, and for recovery of 14 hours of TURN's expert's time at \$100 per hour.

3. General Costs

TURN also seeks compensation for 6.8 hours of general time related to the Edison general rate case. When a party is only partially successful in demonstrating that it has made a substantial contribution on the issues it pursued in a proceeding, as TURN was in this case, we normally allocate preparation time in proportion to the degree of contribution (D.85-08-012). In this case, TURN has already reduced its request from 17.2 total hours to 6.8 hours. In light of this reduction and the relatively few hours allotted to preparation, we will allow full recovery of the claimed general hours. We will also allow recovery of two hours of general preparation time for TURN's expert.

4. Compensation Request

TURN also requests compensation for 15.3 hours that it spent in preparing its request for compensation. We will allow compensation for this time, although we note that the time devoted to preparation of the request comes very close to being excessive.

5. Hourly Rate

TURN requests an hourly rate of \$125 for its attorney, Mr. Singer. In D.88-08-055, we found an hourly rate of \$125 to be reasonable for Mr. Singer. We will follow our earlier determination and base the award on an hourly rate of \$125.

6. Other Reasonable Expenses

TURN also requests recovery of \$738.15 of expenses related to its participation. We note that part of this request includes photocopying costs for documents that were not related to the efforts that we have found constituted TURN's substantial contribution. We will not allow recovery of those costs. In addition, TURN seeks recovery of the costs of purchasing envelopes.

We believe that the prevailing practice is to include such costs as part of the overhead, subsumed in the attorney's fees, and we will not allow separate recovery of those costs. We therefore allow recovery of reasonable expenses of \$708.30.

7. Conclusion

TURN is entitled to compensation of \$13,264.25.

As discussed in previous Commission decisions, this order will provide for interest commencing on May 3, 1988 (the 75th day after TURN filed its request) and continuing until full payment of the award is made.

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 and retained by the organization 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 for which compensation may be claimed.

Findings of Fact

1. TURN's request for eligibility was timely filed and addresses all four elements required by Rule 54(a) of the Commission's Rules of Practice and Procedure.

2. In D.87-04-032, the Commission found that TURN had demonstrated that its participation in proceedings before the Commission during 1987 would pose a significant financial hardship as defined in Rule 75.52(f).

3. It is not necessary at this time to designate a common legal representative for the interests TURN represents in this proceeding.

4. TURN has requested compensation totaling \$ 19,965.83 for its participation in this proceeding.

5. TURN made a significant contribution to D.87-12-066 on the issues of marginal customer costs and the proposed customer charge. TURN's contribution on marginal customer charge was limited to affirming the incremental/decremental approach to calculating marginal customer costs and was made in a portion of its rebuttal testimony and in its briefs.

6. About one-third of TURN's rebuttal testimony on marginal customer costs was not admitted into evidence.

7. An hourly rate of \$125 is a reasonable fee for Mr. Singer.

8. After adjustments are made for TURN's limited contribution on the marginal customer costs issue, the time claimed for TURN's participation in this proceeding is reasonable for the issues on which it made a significant contribution.

9. Of the other costs claimed in connection with TURN's participation in this proceeding, costs of \$708.30 are reasonable.

Conclusions of Law

1. TURN should be ruled eligible to claim compensation for its participation in this proceeding.

2. TURN made a substantial contribution to D.87-12-066.

3. Compensation for the time for preparation of TURN's testimony on marginal customer costs should be reduced by one-third.

4. TURN achieved only limited success in its participation on marginal customer costs, and its award on this issue should be reduced by 50%.

5. Reasonable compensation for TURN's contribution to D.87-12-066 is \$13,264.25.

6. Edison should be ordered to pay TURN \$13,264.25, plus any interest accrued after May 3, 1988.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is eligible to claim compensation for its participation in this proceeding.
2. Southern California Edison Company (Edison) shall pay TURN \$13,264.25 within 15 days as compensation for TURN's substantial contribution to D.87-12-066. Edison shall also pay TURN interest on this amount, calculated at the three-month commercial paper rate, beginning May 3, 1988, and continuing until full payment of the award is made.

This order is effective today.

Dated MAY 26 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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



Victor Weisser, Executive Director

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# **CORRECTION**

**THIS DOCUMENT HAS  
BEEN REPHOTOGRAPHED**

**TO ASSURE**

**LEGIBILITY**