

Decision 90 01 050 JAN 24 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to revise its gas rates and tariffs effective January 1, 1989, pursuant to Decision Nos. 87-12-039 and 88-07-070.

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) Application 88-09-032
) (Filed September 15, 1988)
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O P I N I O N

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Toward Utility Rate Normalization (TURN) requests compensation for its contributions to Decision (D.) 89-05-073, D.89-09-094, and D.89-09-087 in this proceeding, Pacific Gas and Electric Company's (PG&E) first Annual Cost Allocation Proceeding (ACAP). TURN seeks total compensation in the amount of \$79,540. TURN has already been found eligible for compensation in this proceeding by D.89-04-021.

PG&E filed a response to TURN's request.

I. Background

This proceeding was established for the purpose of estimating certain gas utility costs and revenues. The development of these estimates was highly controversial mainly because, under our new regulatory program, PG&E is at risk for noncore revenue recovery between ACAP decisions. The methods for developing estimates were also controversial because this was the first proceeding of its kind and, at the time, the Commission had not adopted specific forecasting methodologies.

The proceeding was bifurcated into two phases. In Phase I, the Commission considered the costs of gas, alternate fuels, and utility costs related to gas procurement. We also

considered utility revenues for the test period according to cost assumptions. Phase I issues were resolved in D.89-05-073.

In Phase II, the Commission considered an appropriate brokerage fee which would reflect PG&E's cost of procurement and marketing. We also adopted a method for allocating costs in attrition year proceedings and general rate cases. These issues were resolved in D.89-09-094.

II. TURN's Request

TURN states it made a "substantial contribution" to the decisions made in this proceeding. Rule 76.56 requires such a substantial contribution, and Rule 76.52(g) defines substantial contribution as one which:

"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."

TURN states its accomplishments in this proceeding "far exceeded these minimum requirements." With regard to its participation in Phase I of this proceeding, TURN states it prevailed on every major issue it addressed, and cites in particular the models and model inputs used in forecasting industrial throughput and the level of necessary rate discounting. Specifically, according to TURN, we adopted its alternative to PG&E's "bill calc" model for computing the "discount adjustment." TURN cites D.89-05-073 which identifies the adopted methodology as "TURN's model." TURN states the development of this model was the most controversial and critical issue in the case, requiring complex analysis of PG&E's model and associated computer codes.

TURN also states that it identified two key model input assumptions that became the focus of heated debate in the

proceeding. One of those inputs was the gas commodity price. The other was the use of exit charges in predicting customer behavior. Both of TURN's positions on these issues, according to TURN, were adopted by the Commission. The adoption of the exit charge assumption saved PG&E ratepayers about \$27 million according to a PG&E estimate.

TURN cites other elements of the Commission's decision which adopted TURN's position, either in whole or in part:

The decision allocated noncore fixed cost undercollections in the Negotiated Revenue Stability Account entirely to the noncore at TURN's suggestion.

The decision adopted two adjustments to PG&E's cogeneration and industrial forecasts pursuant to TURN's recommendations.

The Commission adopted TURN's forecast for Southwest gas supplies.

The Commission adopted TURN's proposed treatment of the Cogeneration Shortfall Account.

The decision adopted TURN's proposal to escalate the forecasts of enhanced oil recovery and GC-2 revenues to 1989 levels.

TURN also points out that the Commission's Phase I decision affirmed an administrative law judge's ruling granting TURN's motion to strike issues of cost allocation. TURN's successful motion significantly reduced hearing time and resulted in effective rejection of the positions put forth in stricken testimony. Finally, TURN states that evidence of its successful participation is the Commission President's public mention of TURN's important role in Phase I of the proceeding.

In Phase II of this proceeding, D.89-09-094 adopted TURN's view that stand-alone costs should be considered in preference to avoidable costs. The decision, according to TURN

adopted in full TURN's estimate of marketing costs, as well as the allocation of those dollars between core and noncore.

TURN correctly describes its participation in Phase I and Phase II of this proceeding. TURN is correct that TURN's participation in this proceeding went beyond the minimum requirements set forth in Rule 76.56. TURN's attorney Florio took a leadership role in this proceeding which was the first of its kind. We adopted many, if not most, of TURN's positions. Clearly, TURN made a substantial contribution to Phase I and Phase II of Application 88-09-032.

III. Itemization of Costs

TURN seeks compensation for 369.25 hours of its attorney's time. Of these hours, 30.75 are billed at a rate of \$175. The remaining 338.50 hours are billed with a \$25 "efficiency adder" to the base fee because TURN's attorney, Michel Florio, appeared in a dual role as both attorney and witness. To 105 hours, TURN adds a 25% "enhancement" to reflect its "exceptional" participation on the discount adjustment issue. TURN also seeks \$1,209 for copying, postage, and related expenses.

A. The Proposed Attorney's Rate

TURN's requested attorney rate is an increase over TURN's last compensation award. TURN states since the last time the Commission evaluated Florio's rate three years ago the market rate for attorney service has escalated. Since then, Florio's level of skill and expertise has increased. Florio, according to TURN, has in recent years become a recognized expert on the California natural gas industry as evidenced by his popularity as a speaker at industry conferences. In support of its request for an hourly rate of \$175, TURN provides attorney billing rates reported in July 1989 issues of Of Counsel. TURN argues the average partner rate in the survey is \$232 per hour, well above TURN's requested rate. Only

two of the six San Francisco firms surveyed reported rates below \$175 per hour.

TURN also states that in 1987, the courts were awarding \$180 per hour to 1978 law graduates such as Florio. Finally, TURN offers affidavits of four utility law practitioners which assert the reasonableness of Florio's requested hourly rate.

PG&E's response to TURN's request for compensation addressed only the issue of hourly fee. PG&E argues that the \$150 rate was established not long ago in 1986 and the Commission has never authorized an hourly base fee for any attorney greater than \$150 (with the exception of the fee adopted in a settlement).

We do not agree with PG&E that an increase should be denied on the grounds that we have never approved a fee greater than \$150. Florio has demonstrated an exceptional level of competence in this case. He not only prevailed on several important issues, but set the tone and direction of the proceeding for other participants. In this particular proceeding, this leadership role was a major undertaking. The ACAP was among the most technically complex proceedings we have recently heard. It required parties to develop and assess interactive models during a period for which there existed little historical data under existing market conditions. The assumptions in these quantitative models required participants to anticipate market responses and customer decision-making. The proceeding also required a solid understanding of state and federal regulatory programs and policies.

Participation by the parties was made more difficult because of the pace of the proceeding. PG&E filed its testimony in September 1988. Hearings were held in December, during which time PG&E made substantial modifications to its showing. The parties had only a few weeks to evaluate this updated showing before the last week of hearings in early January 1989. Given the complexity

of the proceeding and the fact that it was the first of its kind, this schedule was a particular challenge.

In three years it is likely that market rates have risen and Florio's competence increased. As TURN's request demonstrates, \$175 hourly fee is well within the range of attorney's fees in the state's urban areas for attorneys with Florio's years of experience. TURN has also provided statements from several attorneys who practice before this Commission and who assert that Florio's ability and expertise warrant an hourly rate of at least \$200.

We believe it appropriate at this time to increase Florio's hourly fee to \$175.

B. The Proposed "Efficiency Adder"

TURN states the Commission has routinely recognized that a "hybrid" appearance by an individual acting as both attorney and witness is highly cost-effective for ratepayers because they avoid paying rates for both an attorney and a technical expert. TURN cites D.85-10-009 where the Commission granted an "adder," stating that "an enhanced hourly rate is appropriate whenever an advocate's contribution clearly has gone beyond the normal duties and responsibilities of an attorney."

In this case, Florio's participation clearly went beyond the normal duties and responsibilities of an attorney. Florio testified on several major issues in both Phase I and Phase II. In that role he proposed various technical adjustments to PG&E's showing and developed his own "discount adjustment" model. Accordingly, we agree that a \$25 adder is appropriate for all hours for which Florio testified, consistent with previous decisions where intervenors have played dual roles as attorneys and expert witnesses.

C. The Requested Hours

TURN states its request for 369.25 hours was estimated consistent with D.85-08-012, which determined guidelines for

allocating time to issues on which an intervenor prevails. TURN states that many of its hours were not easily allocated because of the complexity of the ACAP, in which many different issues interact. TURN, however, states it does not believe this is a problem since it prevailed on nearly every issue it addressed.

TURN's allocation of time is reasonable and we will adopt it.

D. The Proposed 25% "Enhancement"

TURN seeks a 25% "enhancement" for what it believes was exceptional work on the issue of the "discount adjustment" model. TURN states its analysis of the issue required a level of effort, skill, and creativity which represents "the very best" in intervenor participation in Commission proceedings.

TURN points out that the Commission, in D.88-02-056, approved an enhancement of 25% of the basic award in recognition of an exceptional degree of success. In this case, TURN seeks an enhancement only for the time on which TURN worked directly on the discount adjustment issue.

The Commission has previously approved an enhancement of 25% in recognition of an exceptional degree of success. In D.88-02-056, we stated:

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.

In this case, as TURN points out, savings to ratepayers on the issue of the exit cost alone were quantified by PG&E to be \$27 million. In addition to providing short-term savings to ratepayers, the model proposed by TURN and adopted by the Commission provides a valuable framework for the future in considering the revenue requirement associated with discounted transportation rates. The subject of the discount adjustment model was highly technical and complex. It was also a matter which had not previously been reviewed by the Commission. For these reasons, we believe TURN's request for a 25% enhancement is appropriate and should be adopted.

E. Other Reasonable Costs

TURN seeks \$1,209 for postage, copying, and parking costs, stating these costs are "minimal" in amount. These costs are reasonable and will be adopted.

Findings of Fact

1. TURN requests \$79,540 in compensation for its participation in Phase I and Phase II of this proceeding which was the first of its kind.
2. TURN prevailed on several major issues in this proceeding and therefore made a substantial contribution as required by Rule 76.56 in order for an intervenor to qualify for compensation.
3. TURN's request for an hourly fee of \$175 is within the range of fees for attorneys with experience comparable to that of Michael Florio.
4. Florio's fee has not been increased since 1986. Since then, attorney's fees are likely to have increased and Florio has gained additional experience.
5. Florio's participation in this case went beyond the normal duties and responsibilities of an attorney in that Florio testified on several major issues.
6. TURN's allocation of time between issues is consistent with Commission guidelines.

7. The Commission in D.88-02-056 approved a 25% "enhancement" to the basic fee in recognition of exceptional success.

8. The discount adjustment model proposed by TURN and adopted by the Commission required exceptional skill to develop because of the complexity of related issues and because the Commission had not previously considered the development of such a model.

Conclusions of Law

1. TURN's request for an hourly attorney fee rate of \$175 for Michael Florio is reasonable and should be adopted.

2. TURN's request for a \$25 "efficiency adder" to the basic fee to recognize Florio's dual role as attorney and witness should be granted.

3. TURN's allocation of time to various issues is reasonable and should be adopted.

4. TURN's request for a \$25 "enhancement" to the basic fee to recognize exceptional participation regarding the discount adjustment model should be granted.

5. TURN's request for \$1,209 in postage, copying, and parking costs is reasonable and should be granted.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization's (TURN) request for compensation in the amount of \$79,540 is granted.

2. Pacific Gas and Electric Company shall, within 15 days of the effective date of this order, remit to TURN \$79,540.

This order is effective today.

Dated JAN 24 1990, at San Francisco, California.

G. MITCHELL WALK
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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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