

Decision 90 07 018 JUL 6 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Proceeding on the)	
Commission's Own Motion to Revise)	
Electric Utility Ratemaking)	I.86-10-001
Mechanisms in Response to Changing)	(Filed October 1, 1986)
Conditions in the Electric Industry.)	

**OPINION ON TOWARD UTILITY RATE
NORMALIZATION'S REQUEST FOR COMPENSATION**

Summary

Toward Utility Rate Normalization (TURN) requests compensation of \$17,950.50 for its contributions to Decision (D.) 88-12-041 and D.89-05-067. We find that TURN made a substantial contribution to D.88-12-041, and we award compensation of \$17,863.00.

Introduction

On January 24, 1990, in D.90-01-041, we found TURN eligible for compensation for its substantial contributions to decisions in this proceeding.

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...."

Rule 76.52(h) defines "final order or decision" to mean "an order or decision that resolves the issue(s) for which compensation is sought." Neither D.88-12-041 nor D.89-05-067 was designated as a final decision, and, under a strict interpretation

of the rules, TURN's filing was premature. On May 4, 1990, we issued D.90-05-030, which was the final decision in Investigation (I.) 86-10-001. However, since TURN's filing, nothing has occurred in this case that would require TURN's time, and we will assume that TURN's request encompasses the entire proceeding and that TURN will present no further requests for compensation in this proceeding. Thus, we will deem TURN's request to have been filed on May 4, the date D.90-05-030 was issued. With these assumptions, TURN's filing meets the requirements of Rule 76.56.

TURN submits that its efforts led the Commission eventually to adopt TURN's position that the partial elimination of the Electric Revenue Adjustment Mechanism (ERAM) was undesirable. TURN's position was reflected in its "Petition for Modification of D.88-03-008 and Motion to Suspend the Procedural Schedule" of July 8, 1988. The Commission initially rejected TURN's proposals, but TURN's position was eventually incorporated into a stipulation of the parties, which was approved by the Commission in D.88-12-067.

TURN argues that the fact that it achieved its goal through stipulation of the parties, rather than through litigation, enhances its contribution. The Commission encourages settlements, and TURN believes that any party who achieves a desired result through stipulation should be rewarded, rather than punished.

TURN does not allocate its attorney's time by issue, because TURN's sole concern in this proceeding was the policy issue of the elimination of ERAM for certain customers and the mechanics of implementing this proposal. Most of its attorney's time covered by the request was spent attending workshops, settlement discussions, and other meetings with the parties to the proceeding. TURN submits that these activities directly resulted in the stipulation.

TURN is not requesting compensation for all of the time and expenses it incurred in participating in this proceeding. In

particular, it is not requesting compensation for time connected with its expert witnesses' testimony, which was not presented because the hearings were cancelled. Its attorney's hours not directed to TURN's primary concern in this proceeding were also eliminated from its request.

No party responded to TURN's request for compensation.

Issue to be Decided

Rule 76.58 requires the Commission not only to determine whether TURN made a substantial contribution to D.88-12-041 and D.89-05-067, 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."

Substantial Contribution

We agree with TURN's assertion that it made a substantial contribution to D.88-12-041. We recognize that TURN's participation in the brief hearings was limited, but developing and promoting its position on ERAM required its representative to spend time at workshops, settlement discussions, and other meetings. We agree with TURN that a party's role in developing a settlement that the Commission adopts can be a substantial contribution to the Commission's decision, and the party should be eligible for compensation if its role can be substantiated.

Although D.88-12-041 did not specifically refer to TURN's role, it adopted a stipulation that, among other things, urged the Commission not to eliminate ERAM for only some customers, a proposal that required "a very complex ratemaking structure with

potentially conflicting incentives." This wording echoes TURN's earlier opposition, and we will assume, in the absence of a public record of the settlement discussions or any other party's comments on TURN's request, that this wording reflects TURN's influence in the drafting of the settlement.

TURN's contribution to D.89-05-067 is less apparent. In that decision, we again endorsed the provisions of the stipulation, and we noted that TURN's earlier petition for modification had been superseded by subsequent events. TURN does not explain how it thinks it contributed to this decision, and its request seeks compensation for only the 30 minutes that its attorney took to review the decision.

We conclude that TURN made a significant contribution to D.88-12-041, but not to D.89-05-067.

Compensation

Rule 76.60 sets the bounds for the calculation of compensation:

"[The calculation] shall take into consideration the compensation paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the market value of services paid by the Commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services."

TURN requests compensation for 101.5 hours of Staff Attorney Michael Florio's time at the rate of \$175 per hour, or \$17,762.50, and for \$188.00 of its photocopying, postage, and attorney's expenses, for a total request of \$17,950.50.

In D.90-01-050, we approved an hourly rate of \$175 for Florio's time. TURN's request points out that the time period covered in this request is roughly the same as in the request leading to D.90-01-050. We find that the requested hourly rate of

\$175 is reasonable and does not exceed the market rate for an attorney of Florio's training, experience, and expertise.

We conclude that the time claimed for TURN's contribution, except for the 30 minutes associated with D.89-05-067, is reasonable. We will authorize compensation for 101.0 hours of Florio's time, or \$17,675.00. We also find that TURN's requested expenses are reasonable and should be included in its compensation.

TURN is therefore entitled to compensation of \$17,863.00.

Allocation

TURN also addressed the question of how to allocate its compensation among the utilities involved in I.86-10-001. The proceeding focused on revising ratemaking mechanisms for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E). TURN suggests allocating responsibility on the basis of these utilities' retail sales forecasts. In other compensation awards made in this proceeding, however, we have allocated responsibility for paying the award equally among the three utilities. For the sake of consistency, we will again allocate the responsibility for paying TURN's compensation equally among these three utilities.

Conclusion

TURN is entitled to compensation of \$17,863.00, to be paid by PG&E (\$5,954.34), Edison (\$5,954.33), and SDG&E (\$5,954.33).

Since we deem TURN to have made its filing on May 4, 1990, the date of the issuance of D.90-05-030, it is unnecessary to provide for interest on amounts not paid until after the 75th day after filing, as we have in previous decisions.

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 has requested compensation totaling \$17,950.50 for its participation in this proceeding.

2. TURN was found eligible for compensation in D.90-01-041.

3. TURN made a significant contribution to D.88-12-041 by having its primary concern, the complexities and inconsistent incentives created by a partial elimination of ERAM, incorporated in a stipulation, which we adopted.

4. TURN did not make a significant contribution to D.89-05-067.

5. An hourly rate of \$175 is a reasonable fee for an attorney of Florio's training, experience, and expertise.

6. For the decision to which it made a significant contribution, the time claimed for TURN's participation in this proceeding is reasonable.

7. The other costs claimed in connection with TURN's participation in this proceeding are reasonable.

8. Since its inception, this proceeding has focused on the revision of ratemaking mechanisms for only PG&E, Edison, and SDG&E.

Conclusions of Law

1. TURN made a substantial contribution to D.88-12-041.

2. PG&E should be ordered to pay TURN \$5,954.34.

3. Edison should be ordered to pay TURN \$5,954.33.

4. SDG&E should be ordered to pay TURN \$5,954.33.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company shall pay Toward Utility Rate Normalization (TURN) \$5,954.34 within 15 days as compensation for TURN's substantial contribution to D.88-12-041.

2. Southern California Edison Company shall pay TURN \$5,954.33 within 15 days as compensation for TURN's substantial contribution to D.88-12-041.

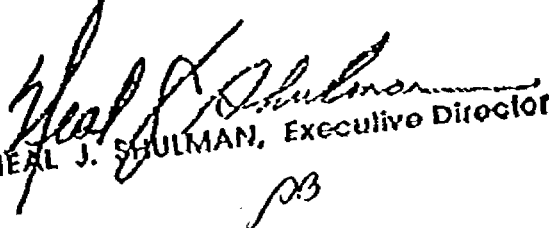
3. San Diego Gas & Electric Company shall pay TURN \$5,954.33 within 15 days as compensation for TURN's substantial contribution to D.88-12-041.

This order is effective today.

Dated JUL 6 1990, 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


NEAL J. SHULMAN, Executive Director