

Decision 90 08 021 AUG 8 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority among other things, to increase its rates and charges for electric and gas service.

Application 88-12-005
(Filed December 5, 1988)

(Electric and Gas) (U 39 M)

And Related Matter.

I.89-03-033
(Filed March 22, 1989)

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.) 89-12-057, Pacific Gas and Electric Company's (PG&E) general rate case (GRC). TURN seeks total compensation of \$128,854.38. TURN has been found eligible for compensation in this proceeding by D.90-01-010.

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

Itemization of Costs

A. The Requested Rates

TURN seeks an hourly rate of \$140 for its attorney, Joel R. Singer. This is a \$15 an hour increase over the rate awarded Singer, by D.88-08-055, for work performed in a Commission proceeding in 1987. We find the rate of \$140 to be reasonable.

TURN seeks an hourly rate of \$175 for the time of its attorney, Michel Florio, appeared in a dual role as both attorney and witness. Florio was recently compensated at this rate, by

D.90-01-050, for work performed in Commission proceedings in the same time frame as this case. We find the rate of \$175 to be reasonable.

TURN requests an hourly rate of \$100 per hour for the services of its expert, William B. Marcus of JBS Energy, Inc. (JBS). TURN states that this is "one of the best bargains utility ratepayers will ever receive." TURN emphasizes Marcus' "encyclopedic knowledge of all aspects of the rate-setting process."

TURN seeks a rates of \$80 an hour for Gayatri Schilberg, a senior economist at JBS. In D.89-07-046 we authorized an hourly rate of \$80.00 for Schilberg. TURN asks \$60 an hour for the work of Jeffrey Nahigian, an energy analyst with JBS.

We find that the rates requested for JBS staff are reasonable.

B. TURN's Contribution To The Decision

Rule 76.56 requires a substantial contribution as a condition for compensation, 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 "have greatly exceeded these minimum requirements." TURN states that it has made a "substantial contribution" to the Commission's decision on seven issues. As set forth in Table 1, TURN's request for compensation allocates its costs among these seven specific issues and an eighth category called general preparation.

TABLE 1

	<u>Requested</u>
DSM	\$ 3,859
Revenue Allocation	4,692
Marginal Costs	32,923
Rate Design	19,773
PG&E Enterprises	15,583
MIP	2,730
Diablo Canyon	14,942
General Preparation	30,932
Other Reasonable Costs	<u>3,420</u>
Total	\$128,854

1. Demand Side Management (DSM)

We agree with TURN that it clearly made a substantial contribution on the issue of DSM. The request is unopposed by PG&E. TURN should be compensated \$3,859 for its efforts on this issue.

2. Revenue Allocation

TURN seeks \$4,692 for its contribution on the issue of revenue allocation. PG&E does not oppose this aspect of TURN's request.

TURN participated on two aspects of revenue allocation. First, TURN successfully opposed the joint exhibit on nonfirm rates. TURN was the only party to oppose the joint exhibit. We did not adopt the exhibit.

Second, TURN proposed a revenue allocation methodology. We did not adopt TURN's proposed methodology. Although TURN argues that the adopted methodology is close to TURN's proposal, we do not find it to be sufficiently close to warrant a finding that TURN made a substantial contribution on this aspect of revenue allocation. Accordingly, we will award TURN compensation of \$2,346, for 50% of its estimated costs of \$4,692 for revenue allocation.

3. Marginal Costs

TURN seeks \$32,923.50 as reasonable compensation for its efforts on marginal cost issues. TURN describes a wide-ranging contribution on marginal cost issues. TURN also concedes that the Commission did not adopt every contention raised by TURN with regard to this issue; most notably, the Commission did not adopt TURN's NOx adder. Nevertheless, TURN seeks full compensation for all issues spent on the marginal cost issue. TURN notes that the Commission has recognized that "[a]n issue does not equate with individual arguments but to recommended outcomes." Here, according to TURN, the outcome TURN recommended was the adoption of higher marginal energy costs and the adopted marginal energy costs are indeed higher than those proposed by any other party.

PG&E objects to compensation for TURN regarding the NOx adder. PG&E states that TURN should not receive compensation of \$8,230 for the cost to propose the NOx adder. We agree with PG&E. We see the question of the NOx adder as proposed by TURN not simply as one of several alternative arguments on a common issue, but as a distinct proposal with an ascertainable outcome.

We note that TURN requests \$1960 for 14 hours of time devoted to preparing its application for rehearing on the issue of marginal costs. Since TURN's application was denied we will disallow \$1960.

We will authorize TURN \$22,734 for its substantial contribution on marginal cost issues.

4. Rate Design

TURN states that it made a substantial contribution on several aspects of rate design. TURN and PG&E successfully opposed Division of Ratepayer Advocate's (DRA) customer charge proposal. TURN also contributed to our decision to reject PG&E's proposal to reduce the Tier 1 and Tier 2 differential by 50%.

However, TURN's contribution on the development of the adopted residential time of use (TOU) rate, Schedule E-7, is

unclear. Although the Commission did not adopt TURN's proposal, TURN argues that TURN obviously contributed to the decision. PG&E argues that TURN's contribution is not so obvious and that TURN should not receive compensation on the rate design issue.

We agree with PG&E that TURN did not make a substantial contribution on the issue of residential TOU rates. We will reduce TURN's request by the amount attributable to the residential TOU issue, \$5,258. TURN will be awarded \$14,515 for its substantial contribution on the other rate design issues.

5. PG&E Enterprises

TURN requests \$15,583 for its contribution on the issue of PG&E Enterprises. TURN's primary recommendation was that the Commission order a management audit to comprehensively evaluate transactions between PG&E and PG&E Enterprises. We adopted TURN's recommendation.

PG&E argues that only a limited portion of TURN's position on this issue was adopted. PG&E notes that TURN's ratemaking recommendations and specific test year disallowances were not adopted. PG&E suggests that no more than 25% of TURN's effort is compensable.

TURN responds that while the Commission did not accept TURN's specific test year disallowances, it did specifically order that these issues be investigated in connection with the audit and left the record open for attrition year adjustments related to these issues.

TURN's argument is correct. To the extent that its specific disallowances were not adopted, it was because there was insufficient information on the record to adopt these disallowances (D.89-12-057, p. 164). As the applicant, PG&E bears equal responsibility for the failure of the record to resolve this issue.

We find that TURN has made a substantial contribution and will award its full request on this issue of \$15,583.

6. Management Incentive Plan (MIP)

TURN requests \$2,730 as compensation for reviewing and briefing the question of PG&E's management incentive plan. TURN was one of the several parties to oppose PG&E's MIP. Our decision rejected the MIP.

PG&E opposes TURN's request for compensation for two reasons. First, PG&E states that no TURN position was documented before briefs were filed. However, as TURN correctly notes, a party is not required to submit testimony on an issue in order to receive compensation. Moreover, we note that PG&E did not provide a full description of the MIP until it filed its rebuttal testimony. After the MIP was fully explained, TURN expressed its position on the MIP at its first available opportunity: the opening brief.

PG&E's second reason for denying compensation on this issue is that it duplicates the position of DRA and the Federal Executive Agencies. While it is true that all three parties opposed the MIP, we find that each offered independent reasons for their opposition. It was this combination of arguments that persuaded us to disallow the costs of this program.

We find that TURN has made a substantial contribution on this issue and will allow its full costs of \$2,730.

7. Diablo Canyon

TURN requests compensation of \$14,942 for its contribution to the issue of Diablo Canyon cost allocation. TURN's testimony focused on certain research and development expenses which should have been allocated to Diablo Canyon. We agreed and accepted TURN's recommendation. TURN also argued, through cross-examination and briefs, that PG&E's incremental approach to cost-allocation was incorrect. We found that PG&E's approach was inappropriate, and quoted from TURN's cross-examination on this issue.

PG&E contends that no more than 50% of TURN's Diablo Canyon effort is properly compensable. PG&E notes that TURN's brief of August 2, 1989 recommends that DRA's general approach be adopted, while the Commission rejected DRA's approach. Thus, according to PG&E, the joint DRA/TURN position was not adopted.

While the Commission did not adopt any party's precise position on the allocation of Diablo Canyon costs, there is no question that TURN made a substantial contribution to our decision to reject PG&E's incremental approach. It is also clear that there was some overlap between DRA's and TURN's challenge to PG&E. Therefore, we will allow TURN \$12,000 for its contribution on this issue.

8. General Preparation

TURN requests \$30,932 for the costs of general preparation. These costs include initial preparation, reviewing testimony, pleadings, and decisions in this proceeding.

Because PG&E recommends that TURN's compensation on specific issues be reduced by one-third, PG&E contends that general preparation costs be compensated on a pro-rata basis. PG&E recommends that TURN's compensation for general preparation be reduced by at least one-third.

Both TURN and PG&E agree that the appropriate standard for awarding general preparation costs is set forth in D.85-08-012:

"If in our opinion an intervenor makes a substantial contribution on all or most of the issues it addresses, or if we determine that the significance of the issues on which the intervenor prevails justifies full compensation even though there hasn't been strict allocation (of time by issue), the intervenor should receive compensation for all of its initial preparation time. If the intervenor is less successful, in our judgement, initial preparation time may be compensated on a pro-rata basis, according to the proportion of successful issues to the total issues addressed."

In this case, we have found that TURN has made a substantial contribution on all of the issues it addressed. Therefore, we will award TURN the full costs of general preparation. However, we note that approximately 20% of JBS' billed time is charged to general preparation. TURN states that the bulk of the expert time in this category was spent in reviewing PG&E's initial testimony, workpapers, and preparing data requests. Given JBS' established expertise in ratemaking, we question whether so much time should be needed for general preparation. In the future, we would expect those experts familiar with our ratemaking process to minimize general preparation time. If an expert's general preparation time exceeds 10% of total compensable time, the party requesting compensation should provide explicit justification for the expert's general preparation costs.

C. Other Reasonable Costs

TURN seeks \$3,420 for postage, copying, long distance telephone, transportation, and parking costs. These costs are reasonable and will be adopted.

Conclusion

TURN is entitled to compensation of \$108,119. The components of this award are set forth in the following table:

<u>Item</u>	<u>Amount</u>
DSM Issues	\$ 3,859
Rev. Alloc. Issues	2,346
Marginal Costs Issues	22,734
Rate Design Issues	14,515
PG&E Enter. Issues	15,583
MIP Issues	2,730
Diablo Canyon Issues	12,000
General Preparation	30,932
Other Costs	<u>3,420</u>
Total	\$108,119

As discussed in previous Commission decisions, this order will provide for interest commencing on April 24, 1990 (the 75th

day after TURN filed its request) and continuing until full payment of the award is made. PG&E has requested 30 days from the date of this decision to make payment to TURN. The request is unopposed.

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 recordkeeping 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 requests \$128,854 in compensation for its participation in this proceeding.
2. TURN made a substantial contribution on each of the major issues in which it participated in this proceeding.
3. TURN's request for an hourly fee of \$140 for Singer is \$15 above the rate the Commission authorized for work performed in 1987.
4. Florio was recently compensated at the rate of \$175 per hour.
5. The hourly rates requested for JBS staff are reasonable.
6. TURN's allocation of time between issues is consistent with Commission guidelines.
7. There was some duplication between DRA and TURN on the issue of Diablo Canyon.

Conclusions of Law

1. TURN's requested hourly rates for its attorneys and consultants are reasonable and should be adopted.
2. TURN's allocation of time to various issues is reasonable and should be adopted.

3. Because TURN made a substantial contribution on each of the major issues in which it participated, TURN's request for the full costs of general preparation is reasonable and should be granted.

4. TURN's request for \$3,420 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 of \$108,119 is granted.

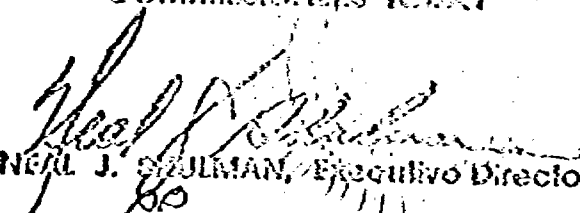
2. Pacific Gas and Electric Company shall, within 30 days of the effective date of this order, remit to TURN \$108,119, plus interest calculated at the three-month commercial paper rate, from April 25, 1990 until full payment is made.

This order is effective today.

Dated AUG 8 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


NEIL J. SULMAN, Executive Director