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Decision 91-04-054 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY for Authority to
Adjust its Electric Rates Effective
November 1, 1990; and for Commission
Order Finding that PG&E's Gas and
Electric Operations during the
Reasonableness Review Period from
January 1, 1989, to December 31,
1989, were Prudent.

ORIGINAL

Application 90-04-003
(Filed April 2, 1990)

(U 39 M)

OPINION ON TURN'S REQUEST FOR COMPENSATION

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Toward Utility Rate Normalization (TURN) requests an award of compensation for its contribution to Decision (D.) 90-12-066 in Pacific Gas and Electric Company's (PG&E) 1990 Energy Cost Adjustment Clause (ECAC) proceeding. TURN seeks total compensation of \$18,691.21. TURN has already been found eligible for compensation in this proceeding by D.90-12-120, and its request for an award of compensation is unopposed.

1. 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 requests compensation for what it claims was a substantial contribution on

the issues of revenue allocation to PG&E's agricultural customers and whether a proposal to reduce the baseline tier differential should be considered in this proceeding.

1.1 Agricultural Revenue Allocation

As TURN notes, the major contested issue in the revenue allocation phase was the cap to be placed on the allocation to the agricultural class. We agree that although D.90-12-066 adopted a 3.5% cap above system average percentage change (SAPC) rather than TURN's recommended cap of 8%, TURN nevertheless made a substantial contribution on the issue. TURN was instrumental in developing the record and persuading the Commission of the need to make more rapid progress toward cost-based agricultural rates. Arguments used in rejecting the California Farm Bureau Federation's proposal to cap agricultural rates at SAPC were to a large extent those advanced in TURN's brief.

Additionally, TURN provided specific factual evidence relied on by the Commission to determine that agricultural rate increases could be spread more evenly among the individual agricultural schedules than had been anticipated in the proposals of other parties. This in turn allowed the Commission more latitude in mitigating increases to specific agricultural classes while considering overall allocation to the agricultural class.

TURN refers to an earlier occasion where the Commission awarded full compensation for a substantial contribution on an issue where TURN's position was not wholly adopted. In D.87-07-033 TURN was found to have substantially contributed on the basis of a "partial victory" in a proceeding where it had proposed a 50% cut in a utility's public relations budget, but the Commission only cut the budget by 25%. We found that TURN's partial victory was sufficient to satisfy Rule 76.52(g). (D.87-07-033, p. 11.) For the same reason, we agree that TURN has substantially contributed to the agricultural revenue allocation issue even though a 3.5% cap was adopted instead of TURN's proposed 8% cap.

We note that the scope of TURN's participation on the agricultural revenue allocation issue overlapped that of other parties. In our opinion, however, TURN's presentation did not materially duplicate those of other parties to such a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted. Rather, to a significant degree, TURN's presentation complemented the other presentations. Therefore, we will order compensation for TURN's contribution to the agricultural revenue allocation issue.

1.2 Tier Differential

The other contribution for which TURN requests compensation is its successful motion to strike DRA's testimony proposing a further reduction in PG&E's residential rate tier differential. TURN argued that the rate design proposals such as this are appropriately considered in the "rate design window" provided in the Commission's generic plan for processing general rate cases and ECAC proceedings.

We agree that TURN's contentions assisted the Commission on this issue, and that it should be awarded compensation for this contribution.

2. Amount of Award

Having determined that TURN should be awarded compensation for its contributions to D.90-12-066, we proceed to analyze the components of its requested award of \$18,691.21.

2.1 Hours

TURN's attorney, Joel R. Singer, and its expert witness, William B. Marcus, maintained detailed records of the hours devoted to this case. Singer's hours were segregated by issue where feasible. In accordance with D.85-08-012, TURN segregated time by issue for all written work. TURN's hearing work was almost exclusively devoted to the agricultural cap issue, making it reasonable to allocate hearing time to that issue.

TURN notes that a significant number of hours fell into a general category of activities for which allocation by issue is almost impossible. These activities include initial review of testimony, pleadings, preliminary motions, and decisions. TURN points out that D.85-08-012 recognized this category, providing that if an intervenor makes a substantial contribution on all or most issues it addresses, it should receive compensation for all of such initial preparation time. (D.85-08-012, p. 15.) Consistent with that decision, we will allow full compensation for such hours since TURN substantially contributed on major issues it raised.

Singer recorded his total time logged on the case on a daily basis from April 13, 1990 to January 28, 1991, then eliminated hours he deemed excessive for the tasks performed. The result was a total of 112.8 hours. TURN then appropriately and reasonably deleted hours directly attributable to two issues: the methodology for maintaining the current tier differential and the proper gas price for forecasting. This resulted in a net claim of 98.7 hours for Singer.

Marcus' efforts were devoted exclusively to the agricultural revenue allocation issue, and no segregation of hours by issue is necessary. Marcus' time (16.25 hours) as well as that of his associate Jeffrey Nahigian (1.0 hour) was detailed in actual bills submitted to TURN by JBS Energy, Inc.

2.2 Hourly Rates

TURN seeks an hourly rate of \$160 for its attorney, Joel R. Singer. This is a \$20 an hour increase over the rate awarded Singer by D.90-08-021 and D.90-09-049 for work performed in Commission proceedings in 1989. TURN claims that this increase is justified by Singer's increasing skill and experience and the general rise in rates, including rates awarded to other practitioners before this Commission. Singer's time log for this

proceeding shows that the bulk of the work was performed in 1990. A small amount associated with preparation of the compensation request (11.1 hours) was performed in 1991.

We find the rate of \$160 to be reasonable for an attorney of Singer's training and experience. We are persuaded that it does not exceed the market value for attorneys of comparable training and experience.

TURN requests an hourly rate of \$120 per hour for the services of its expert, William B. Marcus of JBS Energy, Inc. (JBS). This was Marcus' standard rate for work performed for TURN during 1990. TURN states that it has demonstrated in numerous cases that Marcus' services represent "one of the best bargains utility ratepayers will ever receive." TURN emphasizes Marcus' "encyclopedic knowledge of all aspects of rate-making allow him to make a unique contribution to any case in which he participates".

TURN notes that it was previously compensated at this rate for Marcus' services by D.90-09-049. TURN seeks \$60 an hour for the work of Jeffrey Nahigian, an energy analyst with JBS. TURN was compensated at this rate for Nahigian's services by D.90-08-021 and D.90-09-049. We find that the rates requested for JBS staff are reasonable.

2.3 Other Costs

Rule 76.52(c) defines "other reasonable costs" as "reasonable out-of-pocket expenses incurred by a customer not exceeding 25% of the total reasonable advocate's fees and expert witness fees awarded". TURN seeks \$766.48 for postage, copying, long distance telephone, facsimile, and delivery costs it incurred directly. In addition, it seeks \$122.73 for similar costs and travel costs billed by JBS Energy. The total cost of \$889.21 is reasonable and will be adopted.

3. Conclusion

TURN has substantially assisted the Commission in this proceeding, and is entitled to compensation of \$18,691.21. As

discussed in previous Commission decisions, this order will provide for interest commencing on April 13, 1991 (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. No response to TURN's request for compensation has been received.
2. TURN requests \$18,691.21 in compensation for its participation in this proceeding.
3. TURN made a substantial contribution on the major issues in which it participated in this proceeding.
4. There was some overlap of TURN's presentation and the presentations of other parties on the agricultural revenue allocation issue, but TURN's presentation largely complemented those of other parties.
5. TURN's request for an hourly fee of \$160 for Singer is \$20 above the rate the Commission authorized for work performed in 1989, but is justified for work performed in 1990 and 1991 due to the attorney's increasing experience.
6. The hourly rates requested for JBS staff are reasonable.
7. TURN's allocation of time between issues is consistent with Commission guidelines.

Conclusions of Law

1. TURN's presentation on the agricultural allocation issue did not materially duplicate those of other parties to such a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted.

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

3. TURN's requested hourly rates for its attorney and consultant are reasonable and should be adopted.

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

5. TURN has substantially assisted the Commission in this proceeding, and is is entitled to compensation of \$18,691.21.

6. TURN's request for \$889.21 for postage, copying, telephone, facsimile, delivery, and travel costs is reasonable and should be granted.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization's (TURN) request for compensation of \$18,691.21 is granted.

2. Pacific Gas and Electric Company shall, within 30 days of the effective date of this order, remit to TURN \$18,691.21, plus interest calculated at the three-month commercial paper rate, from April 13, 1991 until full payment is made.

This order is effective today.

Dated April 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

G. MITCHELL WILK

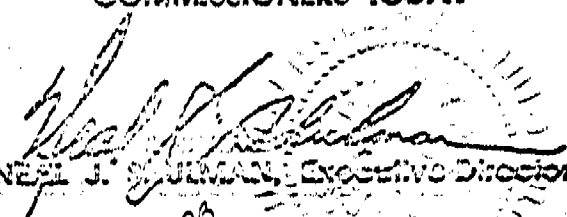
JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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


NEIL J. GOLDMAN, Executive Director