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Decision 91-07-037 July 24, 1991

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.

ORIGINAL

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

(Electric and Gas) (U 39 M)

(See D.89-09-093 for appearances.)

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.) 91-04-062, dated April 24, 1991, in Pacific Gas and Electric Company's (PG&E) 1991 Rate Design Window proceeding. TURN's request was filed on May 22, 1991, within 30 days of the issuance of D.91-04-062, as required by Rule 76.56. TURN seeks total compensation of \$14,622.81. TURN has already been found eligible for compensation in this proceeding by D.90-01-010, and its request for an award of compensation is unopposed.

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 to the resolution of the revenue allocation issues in this proceeding.

TURN's showing in this case was limited to the issue of the rate design for the residential class. The great bulk of TURN's time in this case was spent opposing PG&E's tier closure proposal.

PG&E proposed that the difference between baseline rates (Tier 1) and non-baseline rates (Tier 2) be reduced by using a capped allocation between the tiers. PG&E proposed increasing Tier 1 rates by 3.5% and using the funds created by this increase to lower Tier 2 rates. TURN argued that no increase in Tier 1 rates should be granted. Division of Ratepayer Advocates (DRA), the only other party filing testimony on this issue, supported PG&E. However, in response to TURN's concerns about recent rate increases, DRA's brief stated that "the Commission could adopt a smaller tier 1 cap such as 1.5% or 2.5% . . ."

The Commission adopted a 2.5% cap on Tier 1 rate increases, stating "we agree that TURN has a valid argument regarding bill impacts from recent rate increases" (D.91-04-062, p. 7). Although the Commission did not adopt TURN's recommendation of a zero increase, TURN argues that the fact that the Commission moderated the increase sought by PG&E in response to TURN's argument constitutes a substantial contribution to the Commission's decision.

We agree. Our decision to award TURN full compensation on this issue reflects our previous determinations in similar situations where TURN was awarded full compensation although its entire position was not adopted (D.87-07-033 and D.91-04-054, p. 2). Also, TURN was alone in opposing PG&E's proposal. Without TURN's participation, the Commission may not have been alerted to the need to moderate the rate impact of PG&E's proposal.

The next issue challenged by TURN was PG&E's proposal to reduce the baseline credit for Schedule E-7 (PG&E's residential time of use rate). TURN's testimony demonstrated that adoption of PG&E's proposal would have made the E-7 rate less attractive to low-usage customers. The Commission agreed. TURN sponsored two alternative proposals to address this problem, one of which was adopted in the decision. (D.91-04-062, p. 10.)

We agree that TURN should be compensated for its substantial contribution on the Schedule E-7 rate issue.

Finally, TURN opposed PG&E's proposal to change the revenue allocation for Schedule E-8 (PG&E's seasonal schedule). The Commission adopted PG&E's proposal despite TURN's arguments. TURN has reduced its request to reflect time spent on this issue.

Amount of Award

TURN's attorney, Joel R. Singer, and its expert witness, William B. Marcus, maintained detailed records of the number of hours devoted to this case. Appendix A to the request for compensation contains a daily listing of Singer's time. In preparing Appendix A, Singer reviewed his time records as well as the pleadings, testimony, and transcripts in this case. As part of this review, Singer eliminated any hours which seemed excessive for the task performed. Thus, according to TURN, only those hours which are reasonable for the tasks performed are claimed in Appendix A.

Appendix B to the request for compensation summarizes the amounts Marcus and his associates have billed to TURN. In preparing Appendix B, Singer reviewed the actual bills submitted by JBS Energy, Inc., Marcus' employer.

D.85-08-012 specified three different categories of work activities that allow for differing degrees of issue-by-issue allocation. The first category was described as follows:

- 1) Allocation by Issue is Straightforward.
Testimony, briefs, applications for rehearing, and petitions for modification

are usually organized on the basis of issues, and thus it seems relatively easy for intervenors to keep track of the time spent writing on each issue. Indeed, our experience has been that intervenors are almost always able to allocate time spent in these stages of a case. We expect intervenors to continue to do so. (D.85-08-012 at 14.)

TURN states that it has strictly adhered to this requirement and has segregated its time by issue for all written work related to Schedule E-8. Where the research, review, or drafting of a pleading involved more than one issue, TURN has attempted to fairly allocate the time by issue. Since TURN's hearing work was almost exclusively devoted to the tier differential issue, hearing time is not allocated by issue. TURN points out that this proceeding was extremely fast paced and is thus similar to the typical offset case where, as the Commission has recognized, assigning hearing time to issues is very difficult. (D.85-08-012, p. 15.)

D.85-08-012 next describes the following category:

- 2) Allocation by Issue is Almost Impossible. When initially preparing to participate in a case, offset or otherwise, it is often simply impossible to segregate hours by issue, because this is the stage where an intervenor is learning about the case and preliminarily identifying the issues and how they interrelate. Thus, we see no reason to require a strict allocation of initial general preparation time. 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 (D.85-02-027), the intervenor should receive compensation for all of its initial preparation time. If the intervenor is less successful, in our judgment, initial preparation time may be compensated on a pro-rata basis, according

to the proportion of successful issues to total issues addressed. (D.85-08-012 at 15.)

TURN states that in this case, a significant number of hours fall into the category of general preparation. In addition to initial work on this matter, activities undertaken by its attorney such as reviewing testimony, reviewing the pleadings of other parties, and reviewing the proposed and final decisions fall into this category since it is impossible to know what issues these items will present prior to reviewing them. Since TURN substantially contributed on the major issue it raised in this proceeding, TURN requests full compensation for all time except that allocated to the Schedule E-8 issue.

TURN seeks an hourly rate of \$160 for Joel R. Singer. TURN was recently awarded this rate for Singer's work during 1990 in PG&E's Energy Cost Adjustment Clause proceeding. (D.91-04-054.) TURN believes that the requested rate of \$160 per hour is still well below the market value of attorneys of Singer's skill and experience.

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.

Next TURN requests \$125 per hour for the services of Marcus of JBS Energy, Inc. This was Marcus' standard rate on work for TURN on this case. The rate sought here is a \$5 per hour increase over the rate that the Commission has previously approved for Marcus. (D.90-09-049, Conclusion of Law 2; D.91-04-054.)

Also, TURN seeks rates of \$95 and \$70 per hour, respectively for the work of Marcus' associates, Gayatri Schilberg and Jeffrey Nahigian. This represents a \$15 per hour increase for Schilberg and a \$10 per hour increase for Nahigian over the rates

the Commission has previously approved for their work in 1989. (D.90-08-021, p. 2.)

We find that the rates requested by JBS staff are reasonable in light of the expert witness testimony that they have provided in Commission proceedings during the last two years. The details of the fee request for JBS staff are set forth in Appendix B to the fee request. The total for JBS is \$2,928.45.

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 \$574.36 for postage, copying, long distance telephone, facsimile, and delivery costs it incurred directly. The cost of \$574.36 is reasonable and will be adopted.

Cost for Preparing Request for Compensation

TURN includes 7 hours of attorney time for preparing its request for compensation.

In D.91-07-001, dated July 2, 1991, we stated:

"It has been four years since we stated our expectation that the hours claimed for fees on fees should decrease. Despite our statement, we have been presented in many subsequent cases with substantial claims for fees on fees. We find no justification for attorneys to present ratepayers with a bill for the costs of preparing a bill. Because most intervenors keep accurate and detailed time records and use standardized compensation pleadings, the cost of calculation the fee request should be minimal. Therefore, in the future, we will not authorize compensation for the cost of calculating and submitting a fee request." (p. 12.)

Accordingly, we shall reduce TURN's attorney time by 7 hours.

In summary, we conclude that TURN has substantially assisted the Commission in this proceeding, and is entitled to compensation of \$13,502.81. As discussed in previous Commission decisions, this order will provide for interest commencing on

August 5, 1991 (the 75th day after TURN filed its request) and continuing until full payment of the award is made. PG&E has 30 days from the date of this decision to make payment to TURN.

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 opposition to TURN's request for compensation has been received.
2. TURN requests \$14,622.81 in compensation for its participation in this proceeding.
3. TURN made a substantial contribution on the residential rate design issues in which it participated in this proceeding.
4. There was no overlap of TURN's presentation and the presentations of other parties on the residential revenue allocation issues.
5. TURN's request for an hourly fee of \$160 for Singer is reasonable.
6. The hourly rates requested for JBS staff are reasonable.
7. TURN's allocation of time between issues is consistent with Commission guidelines.
8. TURN's request for \$574.36 for postage, copying, telephone, facsimile, and delivery costs is reasonable and should be granted.
9. TURN's request for compensation includes 7 hours attorney time for preparing its compensation request.

10. The Commission no longer allows fees upon fees for preparing compensation requests (D.91-07-001, p.12).

11. TURN's request for compensation should be reduced by \$1,120 (or 7 hours), since attorney time for preparing fee requests is no longer compensable.

12. TURN has substantially assisted the Commission in this proceeding, and is entitled to compensation of \$13,502.81.

Conclusions of Law

1. TURN's presentation on the residential rate allocation issues did not duplicate those of other parties and a proportional reduction of the award under Rule 76.53(c) is not warranted.

2. 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.

3. Pursuant to Rule 76.56 of the Rules of Practice and Procedure, TURN's request for compensation should be granted.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization's (TURN) request for compensation of \$13,502.81 is granted.

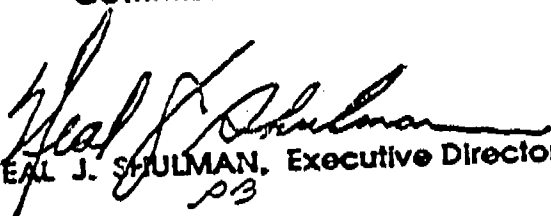
2. Pacific Gas and Electric Company shall, within 30 days of the effective date of this order, remit to TURN \$13,502.81, plus interest calculated at the three-month commercial paper rate, from August 5, 1991 until full payment is made.

This order is effective today.

Dated July 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


NEAL J. SHULMAN, Executive Director
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