

NOV 21 1991

Decision 91-11-064 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of PACIFIC GAS AND ELECTRIC COMPANY for a certificate of public convenience and necessity authorizing participation in the California-Oregon Transmission Project. (U 39 E)

Application 90-08-066
(Filed August 31, 1990)

And Related Matters.

Application 90-08-067
Application 90-09-001

OPINION

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Gregory H. Bowers requests an award of compensation of \$40,407.28 for his substantial contribution to Decision (D.) 91-04-071 and \$3,695.50 for his substantial contribution in responding to the applications for rehearing of D.91-04-071. TURN requests compensation of \$58,901.37 for its substantial contribution to D.91-04-071. Rehearing of D.91-04-071 was denied in D.91-07-075.

Bowers's Request

Bowers received his Bachelor of Science in Civil Engineering from the University of Washington and has specialized training in power system generation planning, hydropower benefit determination, and hydraulics. Bowers is a Professional Engineer registered in California and Washington. He has 17 years of experience in power system planning and has evaluated power projects in the Northwest for the U.S. Army Corps of Engineers and for the Federal Energy Regulatory Commission. He says that in this proceeding, his expert knowledge of the Pacific Northwest power system was needed to evaluate the proposal. Bowers's presentation

sought to establish that participation in the COTP was not cost effective to the applicants. The Commission so found.

We have concluded that the request must be denied. The applicants have failed to demonstrate that the project will be cost effective under the economic and resource assumptions provided in the record of this proceeding. (D.91-04-071, p. 2.)

Bowers's contention at the hearing was that the Pacific Northwest does not (and does not plan to have in the future) the quantity of capacity available for export which was assumed in the application and that the Pacific Northwest's energy available for export would be less than applicants suggested. The Commission so found. The above quotation continues:

In these circumstances we are not convinced that there will be sufficient power available in the Pacific Northwest over the life of the project to support investor-owned utility participation and assure the financial integrity of the project.

D.91-04-071 is replete with statements regarding the lack of capacity and energy in the PNW. Bowers states that the four adjustments to the IOUs' capacity availability analysis which were specifically recognized on page 19 of the decision, were raised in his testimony. He is cited on page 19 as the source for adjustments for "Nonexportable Additions" and Transmission Losses." The adjustment in the decision labeled "No Interruption of DSI Before CA" is also an adjustment proposed by him. The final Commission adjustment (Maintenance Reserves) was broken down and discussed by Bowers as two elements, namely, "maintenance on additions" and "reserves for additions." Energy availability constraints noted by Bowers contributed to the issue of cost effectiveness.

A summary of the costs itemized by Bowers is:

<u>Hourly Fees:</u>	
467.1 hours at \$80/hour	\$37,368.00
<u>Other Reasonable Expenses:</u>	
Copying	\$ 342.51
Postage	\$ 301.85
Travel	\$ 928.00
Food	\$ 408.00
Parking	\$ 103.00
Lodging	\$ 955.92
Expenses Total	\$ 3,039.28
Decision Total Request	\$40,407.28
Rehearing Request	\$ 3,695.50
Total Request	\$44,102.78

TURN's Request

TURN asserts that from the beginning of its participation in this case it has addressed two issues. First, it demonstrated that a mismatch existed between the timing of the project's costs and benefits. As a result, approval of this project would have forced ratepayers to pay for a project, whose benefits would have materialized only in the next century, if at all. TURN proposed a number of ratemaking mechanisms to limit this risk. Second, TURN challenged the cost effectiveness of this project by showing that its cost, when properly calculated, could easily exceed its benefits. As a result, TURN proposed mechanisms to limit ratepayer exposure to excess costs.

The Commission concluded that applicants failed to demonstrate that this project was cost effective and failed to meet the requirements of Public Utilities (PU) Code § 1102. This conclusion, TURN asserts, was based in part on evidence and analysis supplied by it. Since the Commission denied the requested CPCNs, it did not address TURN's ratemaking proposals.

In rejecting the applications, the Commission concluded that PG&E and Edison failed to demonstrate that their participation in the COTP was cost effective and that SDG&E failed to demonstrate the feasibility of negotiating long-term contracts. TURN submits that it made specific contributions to both of these conclusions.

As part of their cost-effectiveness showings, applicants argued that the costs of the reinforcements to the PG&E transmission system south of the Tesla substation should not be included in analyzing the costs of the COTP project. Applicants contended that these reinforcements might never be needed, and, if they were, a separate CPCN would be needed which would require its own cost-effectiveness analysis. The Commission rejected the applicants' argument, concluding instead that the cost of the South of Tesla reinforcements (SOTR) should be analyzed as part of COTP. The Commission made this decision based largely on evidence elicited by TURN during cross-examination and data request responses included in TURN's testimony.

Similarly, in viewing the cost effectiveness of COTP for PG&E, the Commission relied on testimony by IEP to the effect that the gas prices used in the joint study were considerably higher than the gas price forecast in the California Energy Commission's (CEC) ER 90. TURN says it first raised this issue during its cross-examination of PG&E witness Tom. During that cross-examination, TURN introduced Ex. 45 which contained the CEC's ER 90 gas price forecast for PG&E. On cross-examination, Mr. Tom confirmed that the use of the CEC's gas price forecast in PG&E's analysis would have reduced the energy benefits of COTP.

Finally, the Commission relied on PU Code § 1102 to reject these applications. The application of this statute to this case was discussed extensively in TURN's brief and in TURN's comments on the proposed decision. Moreover, TURN's testimony listed a number of factors which reduced the likelihood that long-term contracts for capacity would be available in the Pacific Northwest. In particular, the Commission cited failure to negotiate long-term capacity contracts as the basis for rejecting SDG&E's participation. The failure of both SDG&E and PG&E in this respect was noted in TURN's testimony.

TURN requests full compensation for time allocated to the general preparation of its case. While the Commission's decision to reject the applications obviated the need to address TURN's ratemaking issues, TURN nonetheless believes it made a substantial contribution to this case. The general preparation time for which TURN is requesting compensation was, in its opinion, a necessary prerequisite to its participation in this case. It asserts it could not have substantially contributed on any issue without participating in the prehearing conferences, engaging in discovery, or reviewing the application. This time is in the nature of fixed costs which would have been incurred to support any substantial participation.

Table One summarizes TURN's request for attorney time by issue. TURN is seeking full compensation for the hours in the general preparation (GEN) and cost effectiveness (COST) categories. TURN is not seeking any compensation for time exclusively devoted to the issue of whether COTP would be constructed without applicants' participation (MUNI) or TURN's proposed ratemaking methodologies (RATE) issues.

Table 1

Issue	Hours	
	Florio	Singer
GEN	12.75	132.85
COST		131.50
MUNI		8.30
RATE		39.10
Total Hours (all issues)	324.50	
Total Hours Claimed	277.10	

TURN seeks an hourly rate of \$175 for Michel P. Florio and \$160 for Joel R. Singer.

Positions of Other Parties

DRA supports both Bowers and TURN. DRA believes that TURN made a substantial contribution because TURN's presentation was substantially different from DRA's and the information

contained in TURN's testimony, or revealed through its cross-examination, would probably not have come to the Commission's attention but for TURN's active participation.

DRA believes Bowers' request for compensation is reasonable and his participation was noteworthy. DRA says that Bowers has a more detailed knowledge of the operation of BPA's hydroelectric system than any other witness in the case, as well as extensive knowledge of other resource planning issues in the Pacific Northwest.

The Independent Energy Producers Association (IEP) supports both Bowers and TURN for the same reasons as DRA. IEP asserts that Bowers' analysis was critical to the decision because he was the only party who initially opposed the capacity estimates submitted by applicants and his analysis was crucial in convincing IEP that the issue of availability of capacity was significant. He caused IEP to conduct its own analysis and support him.

With respect to TURN's participation, IEP sees a substantial contribution. TURN repeatedly focused the issue on the uncertainty and poor timing of the cost-effectiveness of the project, which elicited strong utility opposition to being held accountable for any of their estimates. The utilities' unwillingness to stand by their numbers on South of Tesla reinforcements, the availability of Northwest capacity, and the energy benefits which the utilities identified, was a critical element in the denial of the applications. IEP believes TURN contributed to all of those issues.

PG&E has no comment on Bowers' contribution, but contends that TURN's request should be reduced substantially. PG&E also proposes that any award be divided among the utilities as follows: PG&E, 40%; Edison, 40%; and SDG&E, 20%.

PG&E points out that TURN is requesting compensation for all of its 131.5 hours spent on the cost-effectiveness issue, but other parties were substantial contributors to several elements of

that issue. For instance, PG&E says that IEP's testimony raised the gas price forecast issue and Bowers' testimony was the moving force on NW capacity and energy issues that were decided adversely to the applicants. Therefore, PG&E believes that TURN's contribution was not significant because others were the lead advocates of positions adopted on gas price forecasts, NW capacity, and energy. Although TURN's participation on these issues may have in some way "assisted the Commission in the making of its order or decision," it is questionable how significant that participation was in comparison to the participation and contributions of IEP and Bowers. Therefore, PG&E requests that the Commission consider reducing TURN's "COST" hours commensurate with the Commission's evaluation of TURN's actual substantial contribution to the Commission's decision on these issues.

PG&E argues that TURN's actual contribution should be measured in comparison to the contributions of other participants. The awarding of costs for general preparation time should be directly proportionate to the Commission's determination of TURN's actual substantial contribution to the decision. This includes the time that TURN spent preparing for several issues which were never addressed in the decision. Although TURN is not requesting compensation for those hours specifically assigned to those issues, PG&E believes the general preparation time should be appropriately adjusted. PG&E contends that its conclusion is explicitly supported by D.90-08-035.

"Where...a party has not made a substantial contribution on most issues...it is our practice to award compensation for initial preparation on a pro-rata basis, according to the proportion of successful issues...." (D.90-08-035, p. 5.)

Discussion

The request of Bowers need not detain us. His request to be compensated at \$80 per hour for his time is reasonable given his

education, experience, and obvious knowledge in his field. His presentation and testimony were instrumental, in fact essential, to our finding that there is not enough Pacific Northwest capacity available to support IOU participation in the project (Finding 4). We will grant his request.

TURN's request is questionable. TURN's principal presentation at the hearing was in regard to methods of paying for the project should it be approved. It presented two witnesses, one who testified to the timing of costs and benefits and the other who testified regarding two alternative cost recovery methods to recoup the capital costs of COTP. Because IOU participation in COTP was denied for lack of need, neither issue discussed by TURN's witnesses contributed to a resolution of this case. TURN, in all candor, recognizes this and does not request compensation for either its witnesses for time spent on those issues, but, requests full compensation for the time its attorneys and witnesses spent on the general preparation of its case.

In D.90-08-035 we reduced compensation for initial preparation on a pro rata basis where a party did not make a substantial contribution on most issues. In our review of the record it is clear to us that TURN's contribution to issues other than those in which it presented witnesses was secondary. Other parties, notably Bowers, IEP, and DRA carried the lion's share of the burden. TURN contributed by way of cross-examination and briefing support of issues raised by others. A review of D.91-04-071 shows few references to TURN or its contribution except on the South-of-Tesla issue, where TURN participated, but not in a leading role.

TURN must make a "substantial contribution" to the decision (Rule 76.52(g)), which is made when the Commission in its decision has "adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer" (Rule 76.52(g)).

Further, the contribution must not "materially duplicate the contribution or presentation of any other party" and if it does, the compensation "may be reduced in proportion to the amount of duplication of effort" (Rule 76.53(c)).

In our opinion TURN was not the lead party on any issue necessary to our decision and on the issues on which it did make a contribution its contribution was in part a duplication of effort of other parties. Of the \$58,901 request we can only make an informed judgment as to how much was a duplication of effort, but it certainly was in excess of 60%.

We will fix the award for TURN at \$20,000.

Findings of Fact

1. Bowers has made a substantial contribution to D.91-04-071 and D.91-07-075 in that the Commission adopted his position on the insufficiency of Pacific Northwest capacity available to support the participation of PG&E, Edison, and SDG&E in the COT project.

2. A compensation award to Bowers of \$44,100 as his costs of participation is reasonable.

3. TURN has made a substantial contribution to D.91-04-071 in that the Commission adopted its position on the South-of-Tesla issue.

4. TURN's presentation, however, materially duplicated the presentation of others, especially IEP and DRA, and its compensation should be reduced in proportion to its duplication.

5. TURN has not made a substantial contribution on most issues important to the determination of D.91-04-071 and therefore its request for compensation for initial preparation must be reduced on a pro-rata basis.

6. A compensation award to TURN of \$20,000 is reasonable.

7. It is reasonable to divide the compensation awards among the utilities as follows: PG&E, 40%; Edison, 40%; and SDG&E, 20%.

YACQ: 23501211100
- 9 -

Conclusion of Law Bowers should be awarded \$44,100 and TURN awarded \$20,000 for their substantial contribution to D.91-04-071 and D.91-07-075.

ORDER

IT IS ORDERED that:

1. Gregory H. Bowers shall received \$44,100 for his substantial contribution to D.91-04-071 and D.91-07-075.
2. TURN shall received \$20,000 for its substantial contribution to D.91-04-071.
3. The awards shall be paid by the utilities within 30 days of today's decision in the following percentages: Pacific Gas and Electric Company, 40%; Southern California Edison Company, 40%; and San Diego Gas & Electric Company, 20%.

This order is effective today.
Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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

Neal J. Shulman
NEAL J. SHULMAN, Executive Director