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Decision 91-11-066 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell, (U-1001-C), a corporation, for approval of changes to capital depreciation rates.

Application 90-06-061 (Filed June 29, 1990)

In the Matter of the Application of GTE California Incorporated, (U-1002-C), a corporation, for approval of 1991 depreciation rates.

Application 90-06-062 (Filed June 29, 1990)

ORIGINAL

(See Decision 90-12-116 for appearances.)

OPINION ON TURN'S REQUEST FOR COMPENSATION

1. Summary

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Toward Utility Rate Normalization (TURN) requests an award of compensation of \$8,731¹ for its contribution to Decision (D.) 90-12-116, as modified by D.91-04-033 ("the modified decision"). TURN's request for an award of compensation is opposed by applicants, Pacific Bell (Pacific) and GTE California, Inc. (GTEC).

After review and consideration of TURN's request, applicants' opposition and TURN's reply, we grant TURN \$4,163 for suggesting certain clarifications to D.90-12-116 which will avoid misinterpretation and future litigation concerning the effect of expense charges under the new regulatory framework (NRF). As

¹ TURN's original request of \$8,443 was corrected to \$8,091 by Pacific in its Response and by TURN in its Reply. Also in its Reply TURN requested an additional \$640 for preparation of the Reply.

discussed more fully below, we adopted certain of TURN's suggested clarifications in the modified decision.

2. Background

Pacific and GTEC duly filed their first annual applications for adjustments to depreciation rates under the NRF pursuant to D.89-10-031. California Cable Television Association (CCTA) and TURN filed protests to the applications and requested a hearing. The assigned Administrative Law Judge granted the requests for a hearing in order to clarify the standard of review in annual depreciation proceedings under NRF. Thereafter, the Commission found TURN eligible to receive compensation in this proceeding in D.91-02-036.

In reviewing the merits of the applications in D.90-12-116, the Commission did not adopt TURN's arguments that applicant's showings were inadequate because they did not present evidence that the revised plant projection lives are based on objectively verifiable retirement plans. Nor did the Commission agree that the lack of such evidence increases the likelihood of cross-subsidization of new and competitive services. However, the Commission did acknowledge TURN's proposition that depreciation adjustments may affect ratepayers' potential sharable earnings.

TURN subsequently requested rehearing of D.90-12-116. Even though the Commission denied TURN's application for rehearing, in the interest of clarity it modified the order as suggested by TURN. The Commission characterized these modifications as "minor" language changes and expressly stated that in making the modifications, it did not decide the broad policy issues raised by TURN.

TURN now requests compensation for its entire participation in the hearing and for sponsoring modifications to D.90-12-116 in its comments and application for rehearing. TURN requests compensation for the following costs:

T. Long, Esq.	43.5 hours @ \$160/hour	= \$6,960 ²
J. Singer, Esq.	5.8 hours @ \$160/hour	= 928 ³
T. Long, Esq.	4.0 hours @ \$160/hour	= 640 ³

Other reasonable costs:

Photocopying expenses	\$178	
Postage costs	25	= 203

Total costs \$8,731

3. TORN's Substantial Contribution

Rule 76.52(g) of our Rules of Practice and Procedure sets the standard for awarding intervenor compensation in Commission proceedings. This rule defines "substantial contribution" as one which, in the judgment of the Commission, substantially assists the Commission in making its order or decision because it adopts in whole or in part one or more factual or legal contentions, or specific policy or procedural recommendations presented by a party. TORN contends that it has made four substantial contributions to the modified decision in this proceeding which meet this standard.

3.1 Adoption of Proposed Finding and Conclusion

First, TORN cites the "almost verbatim" adoption by the Commission of its assertion that depreciation applications could affect sharable earnings and thereby reduce refunds that ratepayers would otherwise receive. We discussed this issue in D.90-12-116, noting that the new regulatory framework singled out depreciation expense as an item to be reviewed and approved annually. We stated that our objective in doing so was to avoid excessive depreciation expense that might reduce sharable earnings. However, we pointed out that the "whittling away" of sharable earnings, discussed in D.89-10-031, referred to applications for ratemaking adjustments

2 TORN corrected this amount from \$1,280 in its Reply.
3 TORN added this amount for preparation of its Reply.

and that we did not consider adjustments to accrued depreciation to be such a request. In conclusion, we disagreed with TURN's contention that a credit on a ratepayer's bill generated by earnings shared (which reduces the total customer charge) was such a ratemaking adjustment. Accordingly, we stated in Finding of Fact 11 and Conclusion of Law 2:

"The granting of applicants' requested adjustments to depreciation accrual, as amended by DRA, will not change applicants' rates."

In its application for rehearing, TURN argued that the decision as written gives the misleading impression that ratepayers have no legitimate interest in the amount of local exchange carrier (LEC) expenditures under the new regulatory framework. TURN alleged that this issue was a major dispute in the hearing. TURN suggested that the above language be modified as follows:

"The granting of applicants' requested adjustments to depreciation accrual, as amended by DRA, will not change applicants' prices set by the price caps. However, the adjustments may affect rate reductions that ratepayers would receive through the operation of the sharing mechanism." [Emphasis added.]

As noted previously, we found no legal or factual error in D.90-12-116. Therefore, we denied TURN's request for rehearing. However, we modified the original language in the final order to read:

"The granting of applicants' requested adjustments to the depreciation accrual, as amended by DRA, will not change applicants' rate caps. However, the adjustments might affect surcredits that ratepayers would receive through the operation of the sharing mechanism described in D.89-10-031, 33 CPUC 2d at 138-141." [Emphasis added.]

Pacific argues that our modification of Finding of Fact 11 and Conclusion of Law 2 did not reverse our conclusion that no request for rate changes was made in this proceeding and that

changes in depreciation accruals do not change rates. In support of this position, Pacific quotes our statement in the modified order:

"However, TURN's petition brought to our attention several parts of the decision where the effect of the decision can, and should be, described with greater precision. Accordingly, we are making some minor changes to the language of the decision. In so doing, we are not ruling on the broad policy issues raised in TURN's petition, nor are we changing the substantive effect of D.90-12-116."

Pacific contends that these broad policy issues regarding depreciation adjustments were resolved in the new regulatory framework decision and the first depreciation decision.

3.2 Adoption of Proposed Discussion in Opinion

Second, TURN contends that the modification of certain language in the body of the opinion is a significant contribution. In the modified decision, we agreed with TURN that the following underlined phrase should be added to the opinion at page 25:

"We recognize that the sharing mechanism does give a possible incentive for the utilities to increase expenses periodically in order to reduce sharing, but such actions would, at earning levels below 16.5%, also reduce investor earnings."

Pacific contends that this modification was inconsequential since the Commission made explicit what was already well known and specified in the new regulatory framework decision, that is, all earnings above a 16.5% rate of return must be given to ratepayers. Consequently, decreases in earnings above this rate of return do not affect shareholders.

3.3 Adoption of Proposed Description of GTEC's Request

Third, TURN contends that its correction of the Commission's summary of GTEC's application was a significant contribution and adopted in the modified decision. We replaced the

following language in Finding of Fact 3 and the third paragraph of page 2 of the final order:

"GTEC proposes a net reduction in its depreciation accrual of \$7.287 million comprised of: a decrease of \$10.391 million for its technical update of plant; and, an increase of \$3.104 million for represcription of its underground metallic cable account."

We modified the above language to read:

"GTEC proposes a net reduction in its depreciation accrual of \$7.287 million comprised of: a decrease of \$10.391 million in forecast depreciation expenses associated with last year of inside wire amortization; a decrease of \$7.519 million in depreciation expenses resulting from GTEC's technical update of plant; and an increase of \$10.623 million resulting from the represcription of its underground metallic cable account."

GTEC argues that this modification is an insignificant clerical and technical change.

3.4 TURN's Request for Evidentiary Hearings

Lastly, TURN argues that without its request for hearings, these applications would have been granted ex-parte as requested. TURN contends that this contribution is significant because it established the procedure that hearings should be held to address the applications' effect on sharable earnings.

Pacific responds that acknowledging that a mere request for hearings is a significant contribution will invite future intervenors to routinely request hearings to receive compensation. Pacific points out that another intervenor, CCTA, also requested hearings. Therefore, in Pacific's opinion, TURN's request for hearings duplicates that of CCTA.

TURN replies to Pacific and GTEC's opposition that it need only show partial adoption of its contentions to meet the substantial contribution standard and that procedural recommendations qualify for compensation. TURN contends that

without its intervention, the decision would contain misleading language which applicants will misinterpret in future proceedings, leading to unnecessary litigation to clarify the intent of the Commission. Therefore, TURN argues, its clarifications will save future Commission and intervenor resources and it should be awarded compensation for this participation.

3.5 Discussion

In reviewing TURN's first claimed substantial contribution, we note that TURN advanced the general position in this proceeding that a very high standard of review should apply to depreciation rescription and adjustments. More specifically, TURN requested that applicants be required to present independent evidence to verify any shortening of the lives of existing plant. We did not adopt TURN's position and chose to maintain the existing standard of reasonable industry forecasts of projection lives for depreciation rescription. However, TURN offered clarification of our language in D.90-12-116. In D.91-04-033 we substantially adopted TURN's modifications. The adoption of TURN's modification of Finding of Fact 11 and Conclusion of Law 2 is a significant contribution to the proceeding because, although the original language was not in error, TURN offered more specific language which better describes our conclusions and which will avoid future misinterpretation of our order and the need to relitigate this issue of Commission intent. Thus, TURN has helped to save the future resources of this Commission and those of potential interested parties.

The remaining modifications which TURN cites as its second and third substantial contributions do not support an award of compensation because our discussion and order regarding these issues is comprehensible without TURN's suggested changes and little debate over their meaning is likely to occur in the future. D.89-10-031 clearly established 16.5% as a threshold for sharable earnings. The summary of GTEC's request was changed to the

itemized depreciation adjustments requested. These modifications were merely clerical and technical in nature.

Finally, in connection with TURN's fourth claimed substantial contribution, we cannot agree that TURN's request for a hearing altered the future procedure for annual depreciation applications. Protests and requests for hearings are evaluated on a case-by-case basis. We cannot agree that a hearing will always be desired or granted in such future applications. The ALJ Ruling clarified that no such future procedure is guaranteed. Therefore, TURN's contention that its successful protest set a procedural precedent for future depreciation cases is not persuasive.

In summary, we have found that TURN made a substantial contribution on the first, but not the second, third, or fourth bases submitted. TURN did not prevail on its major recommendations in this proceeding, yet it offered resource saving modifications to D.90-12-116, and for that reason it is entitled to compensation. TURN's participation during the Comment period and its application for rehearing are its substantial contribution, reflected in the modified decision. Therefore, we award TURN compensation for 24.75 hours of attorney time (November 28 - June 25, 1991) and miscellaneous other expenses. This award includes time for preparation of the eligibility and compensation requests and the reply. Because TURN's substantial contribution applies equally to both Pacific and GTEC, each applicant should pay 50% of the award.

4. Hourly Rate for Attorneys Singer and Long

TURN requests \$160 per hour for the participation of Attorneys Thomas Long and Joel Singer. TURN contends that this hourly rate has been approved in prior cases for Attorney Singer and is well below the market rate for attorneys with Long's skills and experience.

GTEC opposes this hourly rate. GTEC contends that TURN's hourly rate should not exceed \$125 which GTEC asserts is the hourly rate comparable with that of utility attorneys.

We have previously concluded that an hourly rate of \$160 for Singer is justified and does not exceed the market value for attorneys of comparable training and experience. (D.91-04-054.) Long has had four years of experience in litigation, two of which involved practice before this Commission in a complex prudency review proceeding. In D.91-07-048, we determined the hourly rate of \$160 to be reasonable for an attorney of Long's training and experience. Therefore, we find the rate of \$160 to be reasonable for both Singer and Long's efforts in this proceeding.

5. Conclusion

TURN is awarded compensation in this proceeding of \$3,960 attorneys fees plus \$203 other reasonable costs, a total of \$4,163. We allocate this amount equally between Pacific and GTEC. This order will also provide for interest to accrue commencing on July 24, 1991 on this award continuing until full payment of the award is made. This date represents the 75th day after the filing of TURN for compensation in this proceeding. This order should be made effective today to assure prompt payment.

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, such as the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and other costs for which compensation may be claimed.

Findings of Fact

1. TURN has requested compensation totaling \$8,731 plus interest for its participation in this proceeding.

2. We found TURN eligible to seek compensation for its participation in these proceedings in D-91-02-036.

3. TURN's substantial contribution in this proceeding was to offer valuable clarification of Finding of Fact 11 and Conclusion of Law 2 in D.90-12-116; the Commission adopted these clarifications in D.91-04-033.

4. An hourly rate of \$160 has been previously authorized for TURN's attorney, Joel Singer, and other attorneys with similar training and experience as Thomas Long. This hourly rate continues to be reasonable for experienced utility attorneys, and does not exceed the market value for attorneys of comparable training and experience.

5. Other costs claimed by TURN are within the reasonable limit of office expenses in connection with its participation in this proceeding.

Conclusions of Law

1. TURN should be compensated for its significant contribution to the order in this proceeding consistent with the preceding Findings of Fact.

2. Pacific and GTEC should be ordered to each pay TURN \$2,081.50 plus interest accrued on and after July 24, 1991, for its contribution in this proceeding.

3. This order should be made effective today to assure prompt payment.

ORDER

IT IS ORDERED that Pacific Bell and GTE California, Inc. shall each pay Toward Utility Rate Normalization (TURN) \$2,081.50 within 15 days from the effective date of this order. Pacific Bell and GTE California, Inc. shall also pay TURN interest on this amount commencing on and after July 24, 1991. This interest shall be computed at the average three-month commercial paper rate as published in the Federal Reserve Bulletin until full payment of the award is made.

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. SPULMAN, Executive Director