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Decision 91-11-067 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC)
 COMPANY for authority to revise its gas)
 rates and tariffs effective April 1,)
 1991, pursuant to Decision Nos. 87-12-039,)
 89-01-040, 89-05-073 and 90-04-021.)
 (U 39 G))

ORIGINAL

Application 90-08-029
(Filed August 15, 1990)

O P I N I O N

Summary

Toward Utility Rate Normalization (TURN) requests compensation for its contribution to Phase One and Phase Two of Pacific Gas and Electric Company's (PG&E) 1991 Test Year Annual Cost Allocation Proceeding (ACAP), Application (A.) 90-08-029. TURN was found eligible for compensation in this proceeding by Decision (D.) 91-05-029. Total compensation requested is \$36,338. We find TURN has made a significant contribution to the Phase One multiparty stipulation adopted by the Commission in D.91-05-029, and we award \$33,079.

I. Background

Article 18.7 of our Rules of Practice and Procedure establishes the rules for awarding compensation to public utility customers in Commission proceedings. The process is a two-step procedure involving:

1. A request for eligibility filed within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record.

2. A request for compensation filed within 30 days after issuance of a final order or decision by the Commission in the hearing or proceeding by a customer who has been found eligible for compensation in the proceeding. Filing must include a detailed description of services and expenditures and a description of the customer's substantial contribution to the proceeding.

TURN submitted its Request for Finding of Eligibility for Compensation in this proceeding on January 8, 1991. Except for deferring the issue of cost recovery for brokerage fees to a later hearing (Phase Two), D.91-05-029 decided all issues in A.90-08-029. We also found in D.91-05-029 that TURN had met the requirements of Rule 76.54(a), and was therefore eligible for an award of compensation for its participation in the proceeding. (D.91-05-029, mimeo., pp. 57-62.)

TURN's Request for Compensation was filed within 30 days after issuance of D.91-05-029 and contains a detailed description of both its contribution to the proceeding and the itemized expense categories under which it requests compensation.

II. Issues to be Decided

A. Requirement for Final Order

Rule 76.56 permits a party to file a request for compensation after the Commission issues its final order in the proceeding. D.91-05-029 is the final order for all issues in A.90-08-029 except brokerage fees. Thus, TURN's request meets this requirement in all areas except for 3.5 hours of compensation related to the brokerage fee issue. TURN states it has filed for compensation on this issue prior to a final decision on the basis of the "administrative efficiency" of including this small amount of hours in the larger filing. We agree with the assessment of administrative efficiency; however, this is not the standard

required by our rules, and we are unable to determine if TURN qualifies for compensation on the brokerage fee issue until we have decided that portion of this case. TURN may file for compensation for work related to Phase Two brokerage fees only after a final Commission order has been issued.

B. Substantial Contribution

Rule 76.58 requires the Commission to decide if the customer has made a substantial contribution to the final order, and if so, to describe the contribution and determine the amount of compensation to be paid.

Rule 76.52(g) defines "substantial contribution" as follows:

"(g) 'Substantial contribution' means that, in the judgment of the Commission, the customer's presentation has 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."

We find TURN has made a substantial contribution to D.91-05-029. Most issues in the case were settled through a multiparty stipulation prior to scheduled hearings, and TURN was a key participant in the negotiations. All issues TURN participated in were settled by the stipulation except the allocation of long-term contract revenues. TURN was not successful on this disputed issue and no time spent preparing testimony, briefs, and comments for this area is included. On settlement issues, TURN did not find it feasible to allocate time by specific issue as the settlement process did not clearly segregate and separately negotiate each issue.

PG&E filed comments on July 12, 1991 that agreed with TURN's assessment of its contribution and stated "TURN's participation was instrumental in the successful submission of the

stipulation to the Commission." (PG&E response, p. 2.) PG&E further stated that future intervenor compensation should only be awarded in cases involving settlement negotiations when the test of "substantial contribution" as defined in Rule 76.52(g) is satisfied. We agree, and the substantial contribution standard has been applied here as well as in previous proceedings involving settlement stipulations. (D.90-07-018, 37 CPUC 2d 3.)

C. Fees for Consultant/Expert Witness

The fees of William Marcus of JBS Energy, Inc. and the associate who assisted him in data analysis and preparation of testimony, K. Hanson, are claimed at hourly rates of \$120 and \$60, respectively. The hourly rates requested for Marcus and his associate are asserted to be consistent with the actual billing rates charged to TURN by JBS Energy, Inc. Neither of these hourly rates has been increased over levels previously approved by us, and therefore, both are found reasonable.

D. Increase in Mr. Florio's Base Rate

TURN requests that the base fee of its attorney, Michel Florio, be increased from \$175 per hour to \$190, an increase of 8.6%, for work performed in late 1990 through mid-1991. TURN represents it has been two full years since this Commission has reevaluated Florio's base rate and that during this period the market rate for attorney services has continued to escalate. To establish market rates, TURN submitted an excerpt of reported billing rates for selected major law firms in San Francisco from Of Counsel magazine. The 1990 Of Counsel survey reports a range of partner rates in San Francisco of from \$185 to \$320 per hour. Florio is TURN's senior attorney; he has practiced before us on energy-related matters for twelve and one-half years and is requesting compensation at the low end of surveyed partner fees. Additionally, TURN submitted the declarations of Martin Mattes and James Squeri supporting an hourly rate of at least \$200 per hour. Both Mattes and Squeri are presently partners in San

Francisco law firms, practice before the Commission, and have been previously employed on the staff.

The justification provided is sufficient to support an increase in Florio's base hourly rate to \$190 for the period in question.

E. Application of Efficiency Adder to Base Rate

TURN also requests a \$25 "efficiency adder" to Florio's base rate to reflect his combined role as expert witness and attorney. We have granted this in the past in recognition of Florio's development and sponsorship of significant technical testimony in a particular proceeding, citing his contribution as having clearly gone beyond the normal duties and responsibilities of an attorney. (D.85-10-009, 19 CPUC 2d 67, and D.09-01-050, 35 CPUC 2d 192.) Where this showing has not been made, no efficiency adder was applied. (D.90-07-018, 27 CPUC 2d 3.)

The only listed activity in this proceeding to clearly go beyond the normal duties and responsibilities of an attorney is the 23.25 hours spent preparing testimony. Florio applied his technical background to other activities in case preparation and settlement negotiations, but this knowledge has already been compensated for in a high base rate. We will apply the \$25 efficiency adder only to the 23.25 hours devoted to preparing testimony.

F. Determination of Reasonableness of
of Hours and Other Costs

TURN requests a total of 140.75 hours for Florio, 39.50 for Marcus, and 6.75 for Hanson. Also requested are \$1,275 in itemized business expenses of copying, postage, phone charges, and witness expenses. Florio's time is broken out by date and work description; all but the 3.5 hours for work related to Phase II is reasonable. We also find requested consultant hours and itemized business expenses to be reasonable.

III. Conclusion

TURN is entitled to compensation of \$33,079 to be paid by PG&E. We do not award compensation for time spent preparing the compensation filing or for Phase Two work. We grant an increase in the base hourly rate of TURN's senior attorney Florio to \$190 but find the the additional \$25 per hour "efficiency adder" to apply only to 23.25 hours spent on specific expert witness tasks. Our approved compensation is comprised of:

Attorney/Witness Fees:

M. Florio		
100.25 hrs. x \$190	=	\$21,660
23.25 hrs. x \$215	=	\$ 4,999

Witness/Consulting Fees:

W. Marcus--JBS Energy, Inc.		
39.50 hrs. x \$120	=	\$ 4,740

K. Hanson--JBS Energy, Inc.		
6.75 hrs. x \$60	=	\$ 405

Other Reasonable Costs:

Copying Expenses	=	\$ 728
Postage Costs	=	\$ 210
Long-Distance Telephone	=	\$ 61
Fax Charges	=	\$ 63
Witness Expenses	=	\$ 160
Attorney Expenses	=	\$ 53

TOTAL	=	\$33,079
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As discussed in previous Commission decisions, this order will provide for interest commencing on August 26, 1991 (the 75th day after TURN filed its request) and continuing until full payment of the award is made.

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.

Findings of Fact

1. TURN requests \$36,338 in compensation for its participation in this proceeding.
2. TURN's request was timely.
3. In D.91-05-029 TURN was found eligible to seek compensation for its participation in A.90-08-029.
4. TURN was a key participant in a multiparty stipulation that resolved most issues in the case prior to scheduled hearings. The settlement was accepted by the Commission in D.91-05-029.
5. The hourly rate of \$120 for Marcus and \$60 for K. Hanson, both of JBS Energy, Inc. is reasonable and reflects the actual billing rates charged to TURN by JBS Energy, Inc.
6. An hourly rate of \$190 is a reasonable fee for an attorney of Florio's training, experience, and expertise. This represents an hourly increase of \$15 from the previous rate set in D.90-01-050.
7. Florio went beyond the normal duties and responsibilities of an attorney in the 23.25 hours spent preparing expert witness testimony.
8. All other costs claimed in connection with TURN's participation in this proceeding are reasonable.

Conclusions of Law

1. TURN made a substantial contribution to D.91-05-029.
2. Requested compensation for the brokerage fees issue should not be awarded; TURN should file a request for compensation for this issue after a final Commission order has been issued.
3. An hourly \$25 "efficiency adder" should be applied to 23.25 hours of Florio's requested time.

4. PG&E should be ordered to pay TURN \$33,079 with interest commencing on August 26, 1991 and continuing until full payment of the award is made.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company (PG&E) shall, within 30 days, pay Toward Utility Rate Normalization (TURN) \$33,079 as compensation for TURN's substantial contribution to Decision 91-05-029. PG&E shall also pay interest, calculated at the three-month commercial paper rate, from August 26, 1991 until full payment 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. SHULMAN, Executive Director

Decision 90-08-029

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Application of PACIFIC GAS AND ELECTRIC COMPANY for authority to revise its gas rates and tariffs effective April 1, 1991, pursuant to Decision Nos. 87-12-039, 89-01-040, 89-05-073 and 90-04-021.)	Application 90-08-029
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I. Background

Article 18.7 of our Rules of Practice and Procedure establishes the rules for awarding compensation to public utility customers in Commission proceedings. The process is a two-step procedure involving:

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F. Determination of Reasonableness of Hours and Other Costs

TURN requests a total of 140.75 hours for Florio, 39.50 for Marcus, and 6.75 for Hanson. Also requested are \$1,275 in itemized business expenses of copying, postage, phone charges, and witness expenses. Florio's time is broken out by date and work description.

In D.91-07-001, mimeo., p. 12, we disallowed compensation for time spent preparing compensation requests. Therefore, we remove 13.75 hours of Florio's time that is

identified as work on compensation-related filings. Combining this with the earlier removal of 3.5 hours for work related to Phase II, Florio's reimbursable hours drop to 123.50. We find requested consultant hours and itemized business expenses to be reasonable.

III. Conclusion

TURN is entitled to compensation of \$30,466 to be paid by PG&E. We do not award compensation for time spent preparing the compensation filing or for Phase Two work. We grant an increase in the base hourly rate of TURN's senior attorney Florio to \$190 but find the the additional \$25 per hour "efficiency adder" to apply only to 23.25 hours spent on specific expert witness tasks. Our approved compensation is comprised of:

Attorney/Witness Fees:

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100.25 hrs. x \$190	=	\$19,047
23.25 hrs. x \$215	=	\$ 4,999

Witness/Consulting Fees:

W. Marcus--JBS Energy, Inc.		
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K. Hanson--JBS Energy, Inc.		
6.75 hrs. x \$60	=	\$ 405

Other Reasonable Costs:

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Postage Costs	=	\$ 210
Long-Distance Telephone	=	\$ 61
Fax Charges	=	\$ 63
Witness Expenses	=	\$ 160
Attorney Expenses	=	\$ 53

TOTAL	=	\$30,466
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As discussed in previous Commission decisions, this order will provide for interest commencing on August 26, 1991 (the 75th day after TURN filed its request) and continuing until full payment of the award is made.

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.

Findings of Fact

1. TURN requests \$36,338 in compensation for its participation in this proceeding.
2. TURN's request was timely.
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4. TURN was a key participant in a multiparty stipulation that resolved most issues in the case prior to scheduled hearings. The settlement was accepted by the Commission in D.91-05-029.
5. The hourly rate of \$120 for Marcus and \$60 for K. Hanson, both of JBS Energy, Inc. is reasonable and reflects the actual billing rates charged to TURN by JBS Energy, Inc.
6. An hourly rate of \$190 is a reasonable fee for an attorney of Florio's training, experience, and expertise. This represents an hourly increase of \$15 from the previous rate set in D.90-01-050.
7. Florio went beyond the normal duties and responsibilities of an attorney in the 23.25 hours spent preparing expert witness testimony.
8. Florio spent 13.75 hours preparing compensation-related filings.
9. All other costs claimed in connection with TURN's participation in this proceeding are reasonable.

Conclusions of Law

1. TURN made a substantial contribution to D.91-05-029.
2. Requested compensation for the brokerage fees issue should not be awarded; TURN should file a request for compensation for this issue after a final Commission order has been issued.
3. Compensation for hours spent preparing compensation-related filings should not be awarded.
4. An hourly \$25 "efficiency adder" should be applied to 23.25 hours of Florio's requested time.
5. PG&E should be ordered to pay TURN \$30,466.25, with interest commencing on August 26, 1991 and continuing until full payment of the award is made.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company (PG&E) shall, within 30 days, pay Toward Utility Rate Normalization (TURN) \$30,466.25 as compensation for TURN's substantial contribution to Decision 91-05-029. PG&E shall also pay interest, calculated at the three-month commercial paper rate, from August 26, 1991 until full payment is made.

This order is effective today.

Dated NOV 8 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners