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DEC 23 1991

Decision 91-12-055 December 18, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the )  
Commission's own motion to change )  
the structure of gas utilities' )  
procurement practices and to propose )  
refinements to the regulatory )  
framework for gas utilities. )

ORIGINAL

R.90-02-008  
(Filed February 7, 1990)

And Related Matters. )  
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I.86-06-005  
R.86-06-006  
Application 91-05-056

OPINION

This decision grants Toward Utility Rate Normalization (TURN) \$112,644 as compensation for its contributions to several decisions which restructured the natural gas procurement and transportation program. TURN requested \$203,179 for its participation in these proceedings pursuant to Rule 76.56 of the Commission's Rules of Practice and Procedure.

Background

In February 1990, we issued Rulemaking (R.) 90-02-008 which responded to concerns of customers, marketers and others in the natural gas industry regarding the gas procurement practices of the state's local distribution companies (LDCs). We proposed a framework for changes to the rules which apply to California LDCs and sought comments from the LDCs and interested parties.

Subsequently, several parties to the proceeding filed a settlement which proposed resolution of many issues raised by R.90-02-008 and also addressed several matters relating to natural gas transportation. TURN was among the signatories to the settlement. Decision (D.) 90-09-089 adopted most elements of the settlement and thereby instituted substantial changes to the

structure of the natural gas industry in California. We adopted the new rules as an interim step toward capacity brokering programs. Several subsequent decisions modified or clarified the rules adopted in D.90-09-089. In implementing the new rules, we issued several resolutions in response to advice letters which proposed new tariffs. In a related matter, we also adopted rules for core customers who aggregate loads in order to qualify for transportation-only services.

On October 29, 1990, TURN filed its Request for a Finding of Eligibility for Compensation in these proceedings. On August 14, 1991 TURN filed a request for compensation for its participation in R.90-02-008, et al. TURN seeks \$203,179 for contributions to Decision Nos. 90-09-089, 90-12-100, 91-02-040, 91-02-046 and 91-05-039, and Resolution (Res.) G-2948. Pacific Gas and Electric Company (PG&E) filed a response to the request for compensation.

On August 21, 1991, the assigned Administrative Law Judge (ALJ) issued a ruling seeking additional information from TURN regarding the nature of its participation. Specifically, the ruling stated that TURN had shown significant financial hardship in D.90-09-024 on the basis that it would represent the interests of residential customers. The ruling stated that TURN's request for compensation did not explain how its participation in R.90-02-008 benefited residential customers. The ruling required additional information from TURN regarding how its participation furthered the interests of residential ratepayers. TURN filed a response to the ruling on October 7, 1991.

Summary of TURN's Request

TURN states it has satisfied all of the requirements for intervenor compensation. It believes its accomplishments in the proceedings far exceeded the minimum requirements for establishing a substantial contribution. It was a key participant in the development of the settlement agreement adopted with minor changes

by the Commission. It states it prevailed on several other issues, including proposed modifications of the core aggregation rules (D.91-02-040), the stipulation on rate design for the combined Utility Electric Generators (UEGs) (D.91-05-039), and several other matters. TURN states its participation reached beyond the immediate interests of its normal constituency in order to improve the functioning of the California gas industry as a whole.

TURN seeks compensation of \$203,179 as follows:

Attorney/Expert Fees --	
634 hours x \$235	\$148,990
Enhancement to Fees	
33% x \$148,990	49,167
Other Reasonable Costs	
Copying, postage, telephone, fax	3,633
Attorney/Expert expenses	1,389

TURN states it is difficult in this case to allocate attorney/expert hours to the various topics addressed in these proceedings, but that most relate generally to the procurement issues that were the subject of the settlement and D.90-09-089. TURN notes that, consistent with recent Commission decisions, it has excluded from its calculation 43 hours spent preparing its request and the response to the ALJ request for information. It seeks compensation for these hours if the Commission changes its current position on the issue.

In this proceeding, TURN seeks an increase in the hourly rate for its attorney and expert, Michel P. Florio, from \$175 to \$210. TURN states its request is consistent with the Commission's policy that attorney fees should reflect marketplace standards. TURN seeks an hourly rate that it believes is in the middle of the range of attorney fees charged by attorneys with comparable experience. TURN presents prevailing attorneys fees from a survey taken by Of Counsel, which reports a range of partner rates in

San Francisco of between \$185 and \$320 per hour, and an average partner rate of \$245 an hour.

TURN seeks a \$25 an hour "efficiency adder" to Mr. Florio's fee for his dual role as both attorney and technical expert. TURN states the Commission has awarded such an enhancement in several cases where a TURN attorney has assumed both roles on the basis that ratepayers benefit from efficient representation.

TURN also requests a 33% enhancement to its base fees in recognition of the pivotal role it played and the exceptional results it achieved in this proceeding. TURN states the Commission has awarded such fees in other cases where exceptional circumstances were present or for exceptional performance by the intervenor. TURN believes it deserves the enhancement because of its critical role in negotiating the settlement, the difficulty of the issues, and the level of skill required to participate effectively in this type of proceeding.

TURN proposes that its award be allocated among the three gas utilities based on most recently adopted annual demand forecasts of each utility. With this allocation, Southern California Gas Company (SoCalGas) would pay 53.8%; PG&E would pay 40.9%; San Diego Gas & Electric Company (SDG&E) would pay 5.3%.

Response by PG&E

PG&E states that it does not dispute that TURN's participation in these proceedings was instrumental in the effort to improve the functioning of the gas industry, and that TURN's efforts were exemplary. It does, however, raise concerns over other elements of TURN's request.

PG&E is concerned about the frequency and rate of increases sought for TURN's hourly rate. PG&E comments that the \$210 per hour request is a 20% increase over the prevailing rate and comes only two months after TURN has requested an increase to \$190 per hour in Application 90-08-029. Related to this, PG&E believes work performed for the years 1989 and 1990 should be

compensated at the rate authorized at that time, not the present rate.

PG&E opposes TURN's request to apply the 25% efficiency adder to all hours spent in these proceedings. PG&E believes the Commission has traditionally permitted the efficiency adder for hours spent actually performing "double duty."

Finally, PG&E expresses concern over the impact of the 33% enhancement on ratepayers.

Intervenor Compensation Program Requirements

TURN filed for compensation under Article 18.7 of the Rules of Practice and Procedure.

Pursuant to Rule 76.54, a participant seeking compensation must file, within 30 days of the first prehearing conference or within 45 days after the close of the record, a request for finding of eligibility. The request must include:

1. A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship;
2. A statement of issues to be addressed.
3. An estimate of the compensation to be sought; and
4. A budget for the customer's presentation.

Pursuant to Rule 76.53 of Article 18.7, the Commission may award compensation to intervenors who satisfy several requirements:

- (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the Commission's order or decision;
- (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship;
- (c) The customer's presentation does not materially duplicate the contribution or

presentation of another party to the proceeding. If in the Commission's opinion there is such duplication, any compensation to which the customer would otherwise be entitled may be reduced in proportion to the amount of duplication of effort.

Rule 76.52 defines "substantial contribution" as follows:

"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 address whether TURN meets these various tests and other issues raised by TURN's request.

Is TURN Eligible for Compensation  
in this Proceeding?

On October 29, 1990, TURN filed a request for a finding of eligibility for compensation in R.90-02-008.

TURN's request states that TURN has been found to have met its burden of showing financial hardship for 1990 in D.90-09-024. It states that the issues which it would address in the proceeding were, at the time of the pleading, already matters of record in R.90-02-008. Finally, it provided a budget for the proceeding and estimated compensation to be \$115,000.

As TURN states, TURN had already presented a list of issues at the time of filing. Its estimated budget was a reasonable forecast at the time of its filing. TURN has met the requirements of showing eligibility.

Did TURN Make a Substantial Contribution  
to Commission Decisions?

Rule 76.53(a) requires a party seeking compensation to make a "substantial contribution" to the Commission's order or

decision. TURN states it was a key participant in the development of the multiparty settlement agreement, which was in large part adopted in D.90-09-089. TURN states that it prevailed on several other issues which were outside the scope of the settlement, including those relating to the core aggregation rules adopted in D.91-02-040 and the rate design for the combined UEGs in D.91-05-039.

We agree that TURN made a substantial contribution to several decisions in the captioned proceedings and Res. G-2849. TURN filed comments on the rules proposed in R.90-02-008 and D.90-07-065. TURN actively participated in the formation of the settlement, most of which was adopted in D.90-09-089. TURN also filed comments to advice letters which were the subject of Res. G-2948. The Commission adopted many of the positions advocated by TURN on issues which were included in the settlement and those which were not part of the settlement. No party argues with TURN's characterization of its vital role in the development of the new gas rules.

In sum, we find that TURN assisted the Commission in reaching decisions in the captioned proceedings by providing insightful and well-informed analysis of the issues at hand.

Did TURN's Participation Impose  
Significant Financial Hardship?

Rule 76.54 requires an intervenor seeking a finding of eligibility for compensation to demonstrate that its participation in the proceeding would pose a significant financial hardship. Rule 76.52(f) defines "significant financial hardship" in the context of representing the interests of a particular group:

That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding.

On October 29, 1990, TURN filed a request for a finding of eligibility for compensation in R.90-02-008. That pleading states that "TURN has previously been found to have met its burden of showing (significant) financial hardship for calendar year 1990 in D.90-09-024." D.90-09-024 found that TURN had met its burden to show significant financial hardship for 1990 on the basis that TURN would represent the interests of residential customers whose individual economic interests are small in comparison to the costs of effective participation in Commission proceedings.

On August 21, 1991, the assigned ALJ issued a ruling seeking additional information from TURN on the basis that TURN's request for compensation had not demonstrated that TURN's participation benefited the constituency which it represents as an advocate, and TURN had therefore not demonstrated that if fulfilled the role for which it was granted a finding of significant financial hardship in D.90-09-024.

TURN responded to the ALJ ruling on October 7, 1991. In its response, TURN states its primary motivation is to vindicate the interests of residential ratepayers. TURN believes its participation improved the functioning of the gas industry, which in turn benefits all ratepayers by improving efficiencies. TURN also discussed how certain of its positions and rules adopted by the Commission benefited residential ratepayers.

We initiated this proceeding at the request of noncore customers and other market participants who complained about the operation of then-existing rules. These interests expressed concerns that the rules did not provide reliable transportation services. They believed that, contrary to Commission intent, the rules had permitted the distribution utilities to transport their own noncore gas supplies rather than those of noncore customers and thereby inhibit competition. As TURN's pleadings point out, TURN did not support the Commission's initiative to change the rules.



TURN subsequently participated in the effort to change the rules hoping to protect the interests of residential ratepayers.

Although TURN did not support restructuring our regulatory program, it now believes the restructuring provides benefits to residential ratepayers. We agree with TURN that the smooth operation of the gas industry benefits all customers, even those who are not directly affected by the rules. A regulatory program which successfully promotes competition in the gas industry ultimately reduces the price of natural gas and results in more efficient use of the transportation system. The Commission's new rules are designed to accomplish these ends, and we are confident that the rules are an improvement over those which they superseded.

Many elements of the new rules affect residential ratepayers indirectly by improving efficiencies in the industry. Major program changes, however, do not directly benefit residential ratepayers. For example, the Commission eliminated the noncore portfolio in order to reduce the opportunity for the utilities to tie up transportation with their own gas supplies. This change primarily benefits noncore transportation customers and gas brokers. The Commission adopted a set of transportation services for noncore customers which, with some exceptions, eliminates end-use priorities in favor of a system whereby service reliability depends upon level of payment. The new transportation services provide opportunities for noncore customers to identify and negotiate prices for their own gas supplies which may be transported on a firm basis. All of these rules primarily benefit noncore customers by providing them with expanded transportation and gas purchasing options.

Numerous other provisions affect residential ratepayers only remotely. Among the provisions for which TURN seeks compensation are detailed rules of implementation, for example, open season dates, noncore rate triggers, and treatment of noncore undercollections. Most of these rules would have only a remote

effect on residential ratepayers, and none of them, in our view, require advocacy by a highly skilled representative of residential ratepayers.

Some of the rules affect residential ratepayers more directly. For example, the rules improve the service options available to UEGs in ways which may directly benefit residential electric ratepayers. Because the rules promote pricing which better reflects the value of the service to customers, the need for rate discounting is reduced. This discounting is currently paid for partly by residential and other core customers. The core aggregation program also benefits certain core customers directly.

While some of the rules benefit core customers directly, and some may benefit core customers indirectly, the primary beneficiaries of the new rules are noncore customers and non-utility competitors in the gas industry. TURN has been found eligible for compensation when it represents the interests of residential ratepayers, not noncore customers or other interests. Accordingly, we consider whether TURN should be entitled to compensation for all of its contributions to the proceedings. We have no doubt that TURN influenced the outcome of several decisions. Nor do we question TURN's motivation or expertise in these matters.

On the other hand, we are concerned that expert advocates, such as Mr. Florio, should focus on issues which most directly affect the constituencies for which they are qualified to seek compensation. TURN states its participation "reached beyond the immediate interests of its normal constituency in order to improve the functioning of the California gas industry as a whole." A review of the pleadings in this case supports this observation. We question, however, whether residential ratepayers should fund participation unless they benefit from it. We rely on TURN and other intervenors to assess the impact of various options on their constituencies. As TURN itself states, "the Commission, as the

ultimate arbiter of the public interest, is not well-situated to evaluate what parties may perceive to be in the best interests of their individual constituents." Conversely, TURN is better-situated to advocate the interests of residential ratepayers than to determine the best interests of the public generally. It is, therefore, the role of the Commission and its staff to determine how to best improve the functioning of the gas industry as a whole.

We will apply to this compensation request the resolution of D.90-09-024 and for 1991, D.91-05-029, which found that TURN demonstrated significant financial hardship in representing the interests of residential ratepayers. We will, however, discount TURN's request on the basis that many of the issues resolved in these proceedings are by their nature those which primarily address the needs of noncore customers and competitors. We believe it is equitable, even generous, to discount the hours claimed in TURN's request by 10% in recognition that in the resolution of some of the issues raised in these proceedings, core customers benefitted only indirectly, and in some cases, remotely.

Did TURN's Participation Materially Duplicate the Contributions of Other Parties to These Proceedings?

Rule 76.53 provides that intervenor's fees may be awarded if participation did not duplicate the contributions of other parties. In this case, it is difficult to tell whether and in what instances TURN's efforts duplicated those of others, primarily because most of the hours TURN claims were for participation in settlement negotiations.

TURN appears to ask for compensation for all of the time it spent negotiating the settlement and developing comments, notwithstanding whether its position was advocated by other parties. In a proceeding where hearings are held, duplication of effort is fairly simple to identify. Where settlements are signed, duplication is less apparent. It is clear that TURN contributed to

the settlement presented to us. However, TURN's and other parties' positions were the same in many areas. For example, TURN shared PG&E's positions on the settlement's resolution of core subscription services, UEG services and restrictions on access to Canadian gas supplies. TURN's position on how the \$0.12 Service Level 2 surcharge would be spread among services was shared by several other parties.

We are concerned that TURN's participation may not have been required for resolution of certain settlement issues which were effectively advocated by others. On the other hand, we do not wish to discourage intervenors from joining settlement discussions. In D.88-12-085, we noted that Utility Consumers Action Network (UCAN) could not clearly assign its contribution to a settlement which was ultimately adopted. We granted UCAN's request for 74% of its expenses related to the settlement, stating "it would be inappropriate to encourage intervenor participation in workshops and settlement conferences and deny compensation because there is no clear assignment of contribution." In this case, we will discount by 10% the hours claimed by TURN because many of its positions duplicated the contributions of other parties. This results in a higher percentage of compensation than requested by and granted to UCAN in D.88-12-085.

Is the Hourly Rate Requested by TURN Reasonable?

TURN seeks an increase in Mr. Florio's hourly rate from \$175 to \$210. The prevailing rate was adopted in 1988. TURN provides evidence that this rate is within the mid-range of fees charged by attorneys with comparable experience in the San Francisco area.

PG&E asserts it is a bit steep. It is consistent, however, with our policy of compensating intervenors according to market rates. Mr. Florio is obviously a skilled and knowledgeable attorney with experience comparable to a partner of San Francisco law firm. TURN provides credible evidence that \$210 per hour is in

the mid-range of fees for attorneys with experience comparable to that of Mr. Florio. However, in D.91-11-067, this Commission recently increased Mr. Florio's hourly rate to \$190 for work from August 30, 1990 through mid 1991. To be consistent with this recent charge, we will award Mr. Florio \$190 per hour.

Although we believe the hourly rate for Mr. Florio is reasonable, we agree with PG&E that the rate is not appropriately applied where a rate has already been set during the period in question. It has been our standard practice to award fees which prevail at the time of participation. Most of Mr. Florio's participation took place before August 30, 1990, at which time his authorized hourly rate was \$175. We will, therefore, calculate TURN's award using this rate for work prior to August 30, 1990. For participation thereafter in 1990 and during 1991, we will award \$190 per hour.

Is the \$25 per hour "Efficiency Adder" Reasonable?

TURN has been granted an "efficiency adder" in several proceedings where its attorneys have acted as advocates and experts. We have granted the enhancement on the basis that ratepayers benefit from the efficient presentation of an intervenor's position. TURN seeks a similar enhancement here.

We have generally awarded this enhancement where an attorney testifies as an expert witness. In these proceedings, we did not hold hearings and Mr. Florio, therefore, did not testify. Although Mr. Florio did not testify, we have no doubt that his extensive knowledge of the gas industry and utility operations made him a more effective participant and obviated the need for a technical consultant. Although we find that some of TURN's efforts were duplicative, we also believe that Mr. Florio's participation was highly efficient in areas where it was not duplicative. We will, therefore, grant the \$25 per hour enhancement to Mr. Florio's rate.

Is the 33% Enhancement Reasonable?

In addition to the 25% "efficiency adder," TURN seeks a 33% enhancement to its hourly rate. TURN believes the enhancement is appropriate in this case because of the level of skill required for effective participation, the importance of the case, and the time and effort involved.

We agree with TURN that these proceedings required a great deal of expertise in order to participate effectively. They are undeniably important in that they affect the operation of the entire gas industry in California. The proceedings have also required substantial investments of time by active parties.

We have only once granted an enhancement for an attorney acting as witness and at the same time granted an additional enhancement for exceptional contributions to a proceeding. In D.88-02-056, we increased TURN's attorney's fees by \$25 per hour for his dual role on certain issues. We increased the same award by 25% in recognition that the dollar amount at stake (\$43 million) was very large relative to the amount of time TURN spent on the issue (22.5 hours). In this case, it is impossible to determine the relationship between savings to residential ratepayers and the cost of participation. In addition, we have already found in this case that some of TURN's participation may have been duplicated by others and that some of the issues addressed by TURN did not directly affect its constituency. For these various reasons, we believe the \$25 per hour "efficiency adder" fully recognizes TURN's expertise in these proceedings. We will therefore not grant TURN's request for a 33% enhancement in this case.

Are other Expenses Claimed by TURN Reasonable?

TURN seeks \$5,022 in expenses other than attorneys fees for Mr. Florio. These expenses are reasonable considering the scope and duration of these proceedings.

Is TURN's Proposed Allocation of Expenses Reasonable?

TURN proposes an allocation of its fees among the affected utilities based on the most recently adopted annual demand forecasts of each utility:

SoCalGas	53.8%
PG&E	40.9%
SDG&E	5.3%

This proposed allocation is not opposed by any of the utilities and is reasonable.

Conclusion

We will award TURN fees for its participation in the amount of \$108,912:

Attorney Fees:	435.5 hours x 80% x (\$175 + \$25) =	\$69,680
	198.5 hours x 80% x (\$190 + \$25) =	34,142
Other Expenses:		<u>5,022</u>
	Total:	\$108,844

TURN also seeks 43 hours of attorney's fees for work on the instant request for compensation. We believe 43 hours is an excessive amount of time for drafting a fee request, and will therefore provide compensation for 20 hours of attorney's time. Adding \$3,800 (\$190 x 20 hours) to the award of \$108,844 results in a total award of \$112,644.

As set forth in past compensation decisions, this order will provide for interest commencing the 75th day after the filing of TURN's compensation request. Interest is calculated at the three-month commercial paper rate beginning on October 28, 1991 and continuing until the utility makes its full payment of the award.

Findings of Fact

1. Several decisions have been issued in these proceedings which adopt rules, policies, and tariffs affecting gas utility procurement and transportation services.

2. On October 29, 1990, TURN filed for a finding of eligibility for compensation in these proceedings.

3. D.90-09-024 and D.91-05-029 found TURN had shown significant financial hardship in representing the interests of residential ratepayers.

4. TURN made a substantial contribution to Commission decisions in these proceedings.

5. Some of the issues resolved in these proceedings for which TURN seeks compensation affect residential customers only remotely or indirectly.

6. Some of TURN's contributions in these proceedings were duplicated by the efforts of other participants.

7. TURN's attorney, Mr. Florio, was authorized \$175 per hour for successful participation in Commission proceedings prior to August 30, 1990, and \$190 per hour thereafter in D.91-11-067.

8. TURN's request for compensation demonstrates that \$190 per hour is a reasonable hourly rate for Mr. Florio's participation during 1991.

9. Mr. Florio acted as technical expert and attorney in these proceedings.

10. TURN's request for a 33% "enhancement" in these proceedings is not supported by the record.

#### Conclusions of Law

1. TURN should be found eligible to seek compensation in these proceedings.

2. The hours TURN requests for attorney's fees should be discounted by 10% because many of the issues addressed in these proceedings affect residential ratepayers only indirectly or remotely.

3. The hours TURN requests for attorney's fees should be discounted by an additional 10% because TURN's efforts on some of the issues in these proceedings were duplicated by other parties.

4. Mr. Florio should be granted an hourly rate of \$175 for participation prior to August 30, 1990 and an hourly rate of \$190 for participation thereafter in 1990 and during 1991.



5. The Commission should grant TURN's request for attorney's fees and other expenses as set forth in this decision.

ORDER

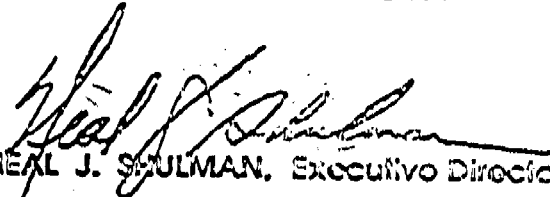
IT IS ORDERED that Pacific Gas and Electric Company shall pay \$46,071.40 plus interest; Southern California Gas Company shall pay \$60,602.47 plus interest; and San Diego Gas & Electric Company shall pay \$5,970.13 plus interest to Toward Utility Rate Normalization. Interest shall be calculated at the three-month commercial paper rate beginning on October 28, 1991 and shall continue until the utility makes its full payment of the award.

This order is effective today.

Dated December 18, 1991, at San Francisco, California.

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

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

  
NEAL J. SCHULMAN, Executive Director

PS