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Decision 92-02-057 February 20, 1992

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 authorization to  
increase rates due to the adoption  
of generally accepted accounting  
principles for compensated absence  
expenses.

ORIGINAL

Application 90-11-031  
(Filed November 19, 1990)

OPINION ON INTERVENOR'S REQUEST FOR COMPENSATION

Summary

We have reviewed Toward Utility Rate Normalization's (TURN) \$13,597 request for compensation for its participation in this proceeding and have concluded that TURN has not made a substantial contribution to Decision (D.) 91-10-018, pursuant to Rule 76.52(g) of the Commission's Rules of Practice and Procedure. Therefore, TURN is not entitled to any compensation.

Background

Pacific Bell filed Application (A.) 90-11-031 for authority to recover \$281.776 million in rates, to be amortized over a ten-year period, due to increased costs associated with the Commission's adoption of generally accepted accounting principles (GAAP) for compensated absence expense. Compensated absence represents the salary expense for employees' earned but unused vacation, personal days, floating holidays, and compensation days plus loadings.

Pacific Bell's request to recover the \$281.776 million was denied by D.91-10-018. The same decision found that TURN met the requirements of eligibility, entitling TURN to request compensation for its participation in this proceeding.

TURN filed its request for compensation on November 14, 1991, within 30 days after the issuance of D.91-10-018. TURN

claims that it made a substantial contribution to the decision and seeks reimbursement for the following costs and expenses totaling \$13,597:

Attorney Fees (1990)	8.0 hours	@ \$160	\$ 1,280
(1991)	56.8 hours	@ \$175	9,888
Witness Fees (1991)	22.0 hours	@ \$100	2,200
Photocopy Expenses			149
Postage			80
TOTAL COSTS			\$13,597

Review of TURN's Compensation Request

Rule 76.53 requires an intervenor to meet the following criteria before it can be awarded compensation:

- a. Its participation without an award of fees or costs imposes a significant financial hardship.
- b. It made a substantial contribution<sup>1</sup> to the adoption of a Commission decision.
- c. Its participation did not materially duplicate the contribution or presentation of any other party to the proceeding.

The first requirement, financial hardship, has been met by TURN in the granting of its eligibility request. Therefore, this requirement need not be addressed further.

Substantial Contribution

TURN claims that it made a substantial contribution to D.91-10-018 within the meaning of Rule 76.52(g) because the decision adopted TURN's recommendation that Pacific Bell not be permitted a \$282 million rate increase to reflect "projected 1988"

<sup>1</sup> Rule 76.52(g) defines substantial contribution to mean, in the judgment of the Commission, the intervenor'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 intervenor.

compensated absence expense, and because the decision agrees with TURN's conclusion that Pacific Bell failed to show that the projected 1988 expense was attributable to services performed in 1988.

In particular, TURN believes that the decision reflects TURN's contentions that:

- a. Pacific Bell did not carry its burden of proof,
- b. Pacific Bell's vacation policy must be determined independent of what GAAP says,
- c. Pacific Bell's interpretation of Statement of Financial Accounting Standard (SFAS) 43's Appendix A conflicts with Pacific Bell's written instructions, and
- d. Pacific Bell does not have any written documentation to support its claim that the projected 1988 expenses were attributable to services already rendered.

In summary, TURN believes that its above-mentioned contentions demonstrate that it has substantially contributed to a decision denying Pacific Bell a \$282 million rate increase, with a modest expenditure of time and resources.

#### Duplicative Participation

TURN worked with the Commission's Division of Ratepayer Advocates (DRA) to oppose Pacific Bell's application. However, TURN claims that it developed points and contributed facts and arguments through cross-examination and briefing which were not emphasized by DRA. TURN states that these points, summarized in the above "substantial contribution" discussion, were cited in the Decision.

TURN excluded from its compensation request the hours expended by TURN's attorney and witness to prepare and edit the testimony of TURN's witness. In this limited respect, TURN acknowledges that it duplicated DRA activities. TURN also excluded

the hours expended by TURN's attorney to obtain an extension of time to file testimony. However, TURN claims that the involvement of its witness was critical in preparing for the evidentiary hearing and in conducting cross-examination. Therefore, TURN requests compensation for the hours its witness devoted to those tasks.

Discussion

No party filed a response to TURN's compensation request. However, the absence of a response does not insure the granting of a compensation award to TURN. TURN must meet the substantial contribution test defined by Rule 76.52(g).

In this proceeding, TURN's participation included testimony of its witness Chew, cross-examination of other parties' witnesses, and the filing of a concurrent brief. As a result of these activities, TURN cites four contentions which it believes demonstrate its substantial contribution in this proceeding.

The decision does reflect each of the four contentions which TURN cites in its compensation request and which were identified in the substantial contribution discussion. However, such reflection is not necessarily the result of a substantial contribution by TURN.

Prior to the filing of this application by Pacific Bell, DRA opposed Pacific Bell's request for recovery of projected 1988 compensated absence expense through Advice Letter Number 15697, dated February 23, 1990. A direct result of DRA's investigation and protest to Pacific Bell's advice letter was Resolution F-627, dated September 12, 1990, which denied Pacific Bell authority to recover projected 1988 compensated absence expense until Pacific Bell provided adequate evidence which demonstrated that such costs should be recovered in rates.

TURN's first contention of substantial contribution is the recognition that Pacific Bell did not carry its burden of proof. TURN's cross-examination of witnesses did corroborate that

Pacific Bell failed to carry its burden of proof. However, it was DRA's substantive direct testimony, rather than TURN's cross-examination, which led to Finding of Fact 13, which stated that Pacific Bell failed to carry its burden of proof in this application.

TURN's second contention is that Pacific Bell's vacation policy must be determined independent of what GAAP says. However, this contention was brought forth by all parties to the proceeding, not just TURN. The direct testimony of witness Hetler on this specific matter provided the basis for the discussion in the decision.

TURN's third and fourth contentions are that Pacific Bell's interpretation of SFAS 43 conflicts with Pacific Bell's written documentation and that Pacific Bell has no written documentation to support its claim that 1988 expenses were attributable to services already rendered. However, these contentions were not introduced or developed in the record by TURN. DRA's witnesses provided comprehensive testimony on these two matters, including the production of Pacific Bell's written vacation policy.

We reviewed TURN's claim that it provided a substantial contribution in this proceeding by examining the evidentiary record and our decision in the proceeding. We have concluded that we relied on DRA's showing in reaching our determinations in D.91-10-018. Given DRA's comprehensive testimony in this proceeding, TURN's activity was secondary, limited to duplicating and corroborating DRA's position. Accordingly, we placed no weight on TURN's participation in arriving at the determinations made in D.91-10-018. TURN did not make a substantial contribution in this proceeding as defined by Rule 76.52(g).

Findings of Fact

1. TURN filed a \$13,597 compensation request on November 14, 1991.

2. TURN has been found eligible to file a compensation request for participation in this proceeding by D.91-10-018.

3. The purpose of compensation awards is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation in a Commission proceeding.

4. The intent of the compensation statute is to encourage intervenor participation.

5. TURN has met Rule 76.53's significant financial hardship requirement.

6. TURN and DRA offered a variety of similar ideas and perspectives during the course of the proceeding. DRA's presentation was dominant, persuasive, and directly resulted in the determinations of D.91-10-018.

Conclusions of Law

1. TURN did not make any substantial contribution to D.91-10-018, as defined in Rule 76.52(g).

2. TURN is not entitled to compensation for its participation in this proceeding.

O R D E R

IT IS ORDERED that Toward Utility Rate Normalization's request for recovery of attorneys fees, witness fees, and administrative costs totaling \$13,597 for its participation in Application 90-11-031 is denied.

This order becomes effective 30 days from today.

Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President

JOHN B. OHANIAN

NORMAN D. SHUMWAY  
Commissioners

Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director