

Mailed

MAR 11 1992

Decision 92-03-011 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Bell, a corporation, for)
authority to increase certain)
intrastate rates and charges)
applicable to telephone services)
furnished within the State of)
California.)

ORIGINAL
Application 85-01-034
(Filed January 22, 1985)

And Related Matters.)
(Telesis Audit Phase))

I.85-03-078
OII 84
Case 86-11-028

(See Decision 90-12-026 for List of Appearances.)

OPINION ON TURN'S REQUEST FOR COMPENSATION

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Toward Utility Rate Normalization (TURN) requests an award of compensation for its contribution to Decision (D.) 91-11-023 denying the joint motion of Pacific Bell (Pacific) and the Division of Ratepayer Advocates (DRA) to adopt a proposed settlement agreement. TURN was found eligible for compensation in this proceeding by D.85-06-028, and its request for compensation is unopposed. TURN's request is timely filed under Rule 76.56.

1. TURN's Contribution to the Decision

Rule 76.56 requires a substantial contribution as a condition for compensation. Rule 76.52(g) defines substantial contribution as one that:

"...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."

TURN states that its contribution in this proceeding satisfies these requirements. TURN states that at hearing and on brief, it successfully argued that the proposed settlement between DRA and Pacific Bell should be rejected because it permitted the utility to retain a substantial cross-subsidy for development of competitive products.¹ The decision notes that, among the parties challenging the settlement, TURN "has been the most forceful in pressing this issue." (D.91-11-023, at p. 13.)

1.1 TURN's Contribution

In D.91-11-023, the Commission disagreed with Pacific Bell and agreed with TURN that the Commission's decision setting Pacific's start-up revenue requirement under the new regulatory framework was not intended to permit the utility to retain past cross-subsidies. (D.91-11-023, at p. 28.) TURN was the only party opposing the settlement to address this point in its brief.

TURN's contribution to the rejection of the settlement is also reflected in the fact that TURN was the only party opposing the settlement that attended the January 29, 1991, settlement conference. In addition, since DRA was a settling party, TURN was the only opponent of the settlement directly representing the interests of a broad class of ratepayers.

In sum, our decision reflects TURN's substantial contribution to the outcome and much of the supporting factual and legal analysis. While some of TURN's participation overlapped that of other parties, it is our judgment that TURN's presentation did not materially duplicate that of other parties to a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted.

¹ TURN argued that the settlement did not deal adequately with the issue of cross-subsidy for voice mail, electronic messaging, voice store and forward, and Smart Desktop.

2. Amount of Award

Having determined that TURN should be awarded compensation for its contributions to D.91-11-023, we turn to the components of TURN's requested award of \$9,419.

Rule 76.56 requires a detailed description of an intervenor's services and expenditures for which compensation is sought. TURN has submitted detailed statements of the time spent by its attorney in preparing for and taking part in this proceeding. (See, Appendix A, TURN Request for Compensation.) In summary, the requested compensation includes:

Attorney Fees:

Thomas J. Long,

Staff Attorney	2.25 hours (1990) x \$160	\$ 360
	51 hours (1991) x \$175	8,925

Other Costs:

Photocopying	109
Postage	25
Total	<u>\$ 9,419</u>

2.1 Hours

TURN's attorney maintained detailed records of the hours devoted to this case. He began work on the matter in November 1990. His billing records show that he devoted approximately 6 hours to analysis of the settlement proposal and approximately 23 hours in preparation of comments and legal analysis. His remaining time included data requests to Pacific Bell, analysis of responses, preparation of a response to settlement amendments, and attendance at the settlement meeting and the prehearing conference in this matter. Preparation of this compensation request was confined to approximately 4.5 hours, which we regard as reasonable given the nature of this case.

2.2 Amount of Award

TURN seeks an hourly rate of \$160 for Attorney Long for work performed in 1990 (2.25 hours) and \$175 for work performed in 1991 (51 hours), rates that TURN states are well below the market rate for attorneys of his skill and experience.

Long is a graduate of Swarthmore, where he was elected to Phi Beta Kappa. He was graduated in 1985 from New York University School of Law, where he was a member of the law review. He clerked for a year for U.S. District Court Judge Rudi M. Brewster in San Diego. He joined the San Francisco firm of Morrison & Foerster in October 1986, devoting much of his time to pro bono work for TURN in the Diablo Canyon prudency review. He joined TURN in October 1990.

In D.91-07-048, we established a \$160 hourly rate for work performed by Long in the fall of 1990 and early 1991, finding that this rate is justified for an attorney of Long's experience and training.² More recently, in response to TURN's fee request in Investigation 87-11-033, we again authorized a \$160 rate for Long for work done through mid-1991.

While TURN's contribution in this case has been significant, we do not choose to authorize a \$175 hourly rate for the same periods that the \$160 rate applies in other cases. Long began his second year with TURN in October 1991. If we were to authorize a 9.1% increase in rates to \$175, we would be inclined to do so for periods after the first year of service. In this case, however, that would amount to fewer than 6 hours. In view of these

2 TURN submits a declaration from a Morrison & Foerster partner stating that Long's time would have been billed by the firm at more than \$175 an hour in the fall of 1990. TURN also submits a June 3, 1991, article from Of Counsel showing hourly rates for "high associates" in large San Francisco law firms range from \$160 to \$230, with an average of about \$190. (Appendices C and D of TURN Request for Compensation.)

considerations, we will retain the \$160 rate for all work performed in this case in 1990 and 1991. We will reexamine a \$175 rate for Long for work that he performs in calendar year 1992. We are persuaded that these rates do not exceed the market value for attorneys of comparable training and experience.

2.3 Other Costs

Rule 76.52(c) defines "other reasonable costs" as "reasonable out-of-pocket expenses incurred by a customer not exceeding 25% of the total reasonable advocate's fees and expert witness fees awarded." TURN seeks \$134 for copying and postage costs it incurred. This cost is reasonable and will be adopted.

3. Conclusion

TURN has substantially assisted the Commission in this proceeding, and it is entitled to compensation of \$8,654. As discussed in previous Commission decisions, this order will provide for interest commencing after February 26, 1992 (the 75th day after TURN filed its request) and continuing until full payment of the award is made.

TURN is placed on notice that it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and 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, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. No response to TURN's request for compensation has been filed.

2. TURN timely requests \$9,419 in compensation for its participating in this proceeding.

3. TURN made a substantial contribution on the major issues in which it participated in this proceeding.

4. In other Commission decisions, TURN's attorney has been granted an hourly fee of \$160 for work performed through much of 1991.

5. An hourly fee of \$160 for TURN's attorney for work performed in 1990 and 1991 does not exceed the market value for attorneys of comparable training and experience.

Conclusions of Law

1. TURN's presentation did not materially duplicate the presentations of other parties to such a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted.

2. TURN's hourly rates for its attorney should be \$160 for work performed in 1990 and 1991.

3. Because TURN made a substantial contribution on the major issues in which it participated, TURN's request for compensation for the full time of general preparation is reasonable and should be granted.

4. TURN's request for \$134 for photocopying and postage costs is reasonable and should be granted.

5. TURN has substantially assisted the Commission in this proceeding and is entitled to compensation of \$8,654.

6. This order should be effective today to minimize delay in recovery of the compensation award.

O R D E R

IT IS ORDERED that:

1. The request of Toward Utility Rate Normalization (TURN) for compensation is granted in the amount of \$8,654.

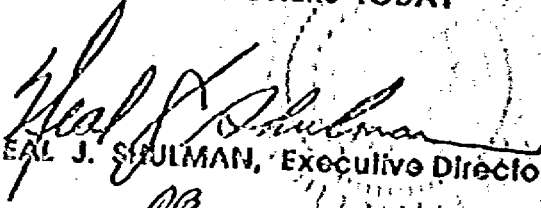
2. Pacific Bell shall, within 30 days of the effective date of this order, remit to TURN \$8,654, plus interest calculated at the 3-month commercial paper rate, after February 26, 1992, until full payment is made.

This order is effective today.

Dated March 11, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
PB