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Decision 92-03-067 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY for)
Authority to Revise its Rates)
Effective October 1, 1991, in its)
Biennial Cost Allocation Proceeding.)
(U 904 G))

TURN
Application 91-03-039
(Petition filed January 27, 1992)

OPINION

Toward Utility Rate Normalization (TURN) petitions for an award of compensation of \$57,039 for its substantial contributions to Decision (D.) 91-12-075 in this Southern California Gas Company (SoCalGas) Biennial Cost Allocation Proceeding (BCAP). TURN was found eligible for compensation in this case in D.91-12-075.

TURN asserts that its accomplishments in this proceeding far exceed the minimum requirements for establishing a substantial contribution. TURN believes that its participation was exceptionally successful, when measured by any reasonable standard. TURN claims that it was able to convince the Commission to reject, in their entirety, cost reallocation proposals advanced by SoCalGas and its noncore customers that could have increased core rates by over \$150 million, that it succeeded in defeating SoCalGas' proposed residential customer charge increase, and further prevailed with respect to several lesser revenue requirement and system capacity issues.

A. Cost Allocation Issues

From a dollars and cents perspective, TURN's greatest contribution, in its opinion, was in the area of cost allocation. On no less than nine separate subissues, TURN--sometimes with the support of the Division of Ratepayer Advocates (DRA) and sometimes without it--succeeded in convincing the Commission to adopt its position virtually 100%.

1. Administrative and General (A&G) Costs

Probably the single most hotly-contested issue in this case was the allocation of SoCalGas' A&G costs. SoCalGas proffered an internally prepared study of its A&G costs and on that basis recommended moving from the current "50/50" treatment of these expenses to a "first step" 65/35 assignment. Several of the noncore intervenors advocated full implementation of the SoCalGas study, which would have produced an 84/16 treatment. DRA recommended deferral of the issue to the Long-Run Marginal Cost (LRMC) proceeding and, failing that, suggested a first step reallocation of 60/40 (Ex.49). TURN witness Michael P. Florio presented an extensive critique of the SoCalGas study in Exhibit 55, and advocated no change in the current formula.

D.91-12-075 made no change and reflects a complete victory for TURN on this issue. It refers to portions of TURN's critique as "(m)ost persuasive" (p. 32). This represents a substantial contribution.

2. Double Demand Charge

A number of noncore customers, gas suppliers and pipelines presented proposals in this case that would have excused certain noncore customers from paying their allocated share of SoCalGas' interstate pipeline demand charges, on the grounds that such customers would otherwise be subject to a "double demand charge." TURN was the only party that completely opposed some form of immediate action on the double demand charge issue.

D.91-12-075 denied all requests to make changes in the method used to allocate interstate pipeline demand charges, consistent with the position advanced by TURN. This therefore represents another substantial contribution.

3. Minimum Purchase Obligation (MPO) Costs

The City of Long Beach, with support from a number of other noncore customers, proposed a change in the method of determining the level of MPO transition costs, which would have

resulted in retail core customers paying a large share of these excess gas commodity costs. TURN, with support from DRA and SoCalGas, opposed that proposal.

D.91-12-075 flatly rejected the effort to alter this Commission's past treatment of the MPO issue. In so doing, the decision included almost a page and a half reference to the testimony of TURN's witness on the subject.

4. Allocation of EOR Revenue Credits

The city of Long Beach, again with support from other noncore intervenors, argued that this Commission should change its historic treatment of the revenues received from service to the EOR market. TURN opposed this effort, which would have produced an increase in retail core rates. D.90-12-075 agreed with TURN.

5. Lost and Unaccounted For Gas (LUAF)

SDG&E and other noncore and wholesale intervenors supported a change in the allocation of LUAF gas costs, based upon an old SoCalGas study that was not sponsored in this proceeding by any SoCalGas witness. TURN, DRA, and SoCalGas opposed any change at this time. D.91-12-075 again rejected the proposed change in cost allocation, citing TURN as the lead party in opposition.

6. Common Distribution Costs

SoCalGas proposed a reallocation of common distribution system costs that would have placed an even greater share of such costs on core ratepayers. DRA and TURN both opposed this recommendation. Since DRA's testimony on this issue was distributed first, TURN was able to supplement DRA's analysis and arguments without significant overlap or duplication. D.91-12-75 accepted the DRA/TURN position, citing arguments raised by both parties.

7. P-2A Transfers to Noncore Status

Pursuant to Resolution G-2948, a number of SoCalGas' P-2A customers have sought to transfer to noncore status. An issue arose in this proceeding regarding the accounting treatment of any

transfers that the Commission may authorize of customers applying after August 1, 1991. TURN proposed a specific tracking subaccount to capture the revenue losses associated with such transfers. D.91-12-075 adopted TURN's recommendation on this issue.

8. UEG Igniter Fuel Rate and (9) UEG Customer-Related Transmission Costs

Several parties in this proceeding proposed changes in the manner in which UEG igniter fuel rates are determined. TURN also developed through cross-examination and briefing that certain customer-related transmission costs associated exclusively with UEG service had not been properly allocated to the customers responsible. Ultimately TURN, DRA, SoCalGas, and Edison agreed upon a uniform recommendation on these two issues, which was submitted in the form of joint comments on the Administrative Law Judge's (ALJ) proposed decision. D.91-12-075 adopted the positions set forth in the joint comments, with a minor modification. TURN therefore made a substantial contribution on these two issues, which were treated as a package by the parties.

B. System Capacity Forecast

TURN was the only party in this case that challenged SoCalGas's complete exclusion of the Transwestern (TW) mainline expansion from its forecast of system capacity. The Commission accepted TURN's argument and included 30 MMcf/d of additional TW capacity in its forecast of the gas supply available to the SoCalGas system.

C. Revenue Requirements Issues

TURN states that it made several substantial contributions with respect to revenue requirements issues in this case. On the subject of brokerage fees, there was a significant dispute between SoCalGas and DRA regarding the impact of the expected reduction in SoCalGas's noncore sales activity. TURN proposed that, subsequent to the effective date of this BCAP decision, SoCalGas should (like PG&E) receive balancing account

treatment for any shortfall in brokerage fee revenues, and that such balance should be recovered from the noncore market. The Commission agreed with TURN's suggested compromise resolution.

With respect to three different cost items--brokerage fees, Pitas Point franchise fees and uncollectibles (FF&U), and interutility transportation charges--SoCalGas sought authorization in this case to record and collect in rates any undercollections in revenue recovery that occurred between August 1, 1991, and the effective date of a decision in this proceeding. TURN uniformly opposed these requests on grounds of retroactive ratemaking. The Commission agreed and disallowed any retroactive recovery for any of these three costs items.

Several noncore and wholesale parties argued in this case that the refunds that SoCalGas has received from El Paso and from the Southland/Chevron litigation should not be treated as a credit against the BCAP revenue requirement, but rather should be refunded to customers on a lump-sum basis. TURN, along with DRA, supported the rate credit approach. The Commission adopted the rate credit approach supported by TURN.

Finally, with respect to the amount of El Paso demand charges reflected in rates and SoCalGas' request to recover an alleged cogeneration shortfall, D.91-12-075 adopted the positions advocated by TURN.

D. Residential Rate Design

SoCalGas' rate proposal in this case included an increase in the residential customer charge from the current \$3.10 per month to \$4.10. DRA proposed a somewhat smaller increase, to \$3.60 per month. TURN opposed any increase in the customer charge.

D.91-12-075 agreed with TURN.

B. Compensation Award

TURN's requested compensation in this proceeding is:

Attorney/Witness Fees:

M. Florio		
209.75 Hours x \$250	=	\$52,438
11.50 Hours x \$225	=	\$ 2,587

Other Reasonable Costs:

Copying Expenses	\$ 1,476
Postage Costs	\$ 419
Long-Distance Telephone	\$ 16
Fax Charges	\$ 45
Attorney/Witness Expenses	\$ 58
	<u>\$ 2,014</u>

TOTAL **\$57,039**

TURN's attorney/witness Florio maintained detailed contemporaneous time records indicating the number of hours devoted to this case, segregated by issue where feasible in accordance with the guidelines adopted in D.85-08-012. Attachment A to TURN's petition contains a daily listing of the specific tasks performed by Mr. Florio in connection with this proceeding, coded by issue as appropriate.

Since this is the first case in which TURN has sought compensation for work performed by Mr. Florio entirely within the 1991 calendar year, TURN requests that a new 1991 hourly base rate be established for Mr. Florio's work as an attorney at the level of \$225 per hour. In this particular case, TURN is also requesting a \$25 efficiency adder to the base fee, because of the fact that Mr. Florio functioned in a dual role as both attorney and technical expert. The total hourly rate requested for Mr. Florio's time is therefore \$250, except for those hours spent preparing compensation related pleadings, which are billed at the unenhanced base rate.

In the event that this Commission adopts a base fee for Mr. Florio's work as an attorney that is less than \$225 per hour, TURN requests in the alternative that the \$25 per hour efficiency adder be increased to a 20 percent adder.

TURN's request for a new base fee level of \$225 per hour for Mr. Florio's work as an attorney is based on "the compensation paid to persons of comparable training and experience who offer similar services" (Rule 76.60). TURN says that in determining a reasonable fee we must consider that a significant number of the hours that TURN devotes to Commission proceedings ultimately prove not to be compensable under the Commission's rules. The hourly attorney fee data cited by TURN reflects rates that are charged to clients regardless of the outcome of the proceeding in question. The work that TURN performs before this Commission, on the other hand, is more analogous to contingent fee litigation, since compensation is received only if its position is adopted in the ultimate decision.

TURN submitted excerpts from the June 1991 issue of Of Counsel, which presents the reported billing rates for selected major law firms in San Francisco and other cities. Each firm was asked to provide its high and low rates for both partners and associates. Given Mr. Florio's level of experience and his responsibilities as TURN's Senior Attorney, TURN submits that he should be evaluated as falling in at least the mid-range of the reported rates for partners. The Of Counsel survey for 1991 reported a range of partner rates in San Francisco of from \$145 (one firm) to \$350 (two firms) per hour. The midpoint of the range for nine of the eleven firms surveyed is at or above the \$225 requested here as Mr. Florio's base fee. Moreover, the average partner rate in the survey is about \$240 per hour, well above the base rate of \$225 that TURN is seeking.

In our opinion TURN's request for an hourly attorney fee of \$250 for Mr. Florio is excessive. In the recent past we have

awarded him \$190 an hour (D.91-12-055 in R.90-02-008) and nothing has occurred since then which would persuade us to increase his fee. The country is in a recession, government employees are having their salaries reduced, lawyers are being laid off from law firms because of lack of work, and it is more difficult for lawyers to find work. Under the circumstances, this is not the time to increase fees, especially when it is the public that pays them. We must not forget we are dealing with the public's money. We will authorize \$190 per hour for Mr. Florio with a \$25 adder because of his capacity as a technical expert (D.85-08-012).

Findings of Fact

1. TURN has made substantial contributions to D.91-12-075 in regard to cost allocation issues, system capacity forecast, revenue requirement issues, and residential rate design.

2. A reasonable attorney fee for TURN's attorney Florio is \$190 per hour with a \$25 adder for his time as an expert, except that no adder is allowed for the time spent preparing compensation related pleadings.

3. The attorney hours expended and fees are:

209.75 hours x \$215	= \$ 45,096
11.50 hours x \$190	= <u>2,185</u>
	\$ 47,281
Other costs	<u>2,014</u>
TOTAL	\$ 49,295

Conclusion of Law

The Commission concludes that TURN should be awarded compensation in the amount of \$49,295.

ORDER

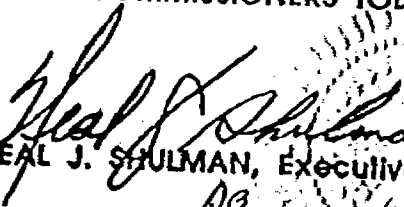
IT IS ORDERED that Toward Utility Rate Normalization is awarded \$49,295 in intervenor fees to be paid by Southern California Gas Company within 30 days of the effective date of this order.

This order is effective today.

Dated March 31, 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
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