

Mailed

Decision 92-04-050 April 22, 1992

APR 22 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority among other things, to increase its rates and charges for electric and gas service.

Application 88-12-005 (Filed December 5, 1988)

(Electric and Gas) (U 39 M)

And Related Matter.

I.89-03-033 (Filed March 22, 1989)

(See Decision 89-09-093 for appearances.)

OPINION ON REQUEST FOR COMPENSATION

1. Summary of Decision

Toward Utility Rate Normalization (TURN) is awarded \$22,278.60 in compensation for its substantial contribution to Decision (D.) 91-07-042, which rejected a nonfirm rate settlement in the test year 1990 general rate case of Pacific Gas and Electric Company (PG&E). The award includes one-half of TURN's request for expert witness services from JBS Energy, Inc. TURN may renew its request for the remaining half following a final decision on nonfirm rates.

2. Background

In D.89-12-057,¹ the Commission ordered an additional phase in PG&E's test year 1990 general rate case to address nonfirm electric rates. The active parties served their testimony, and just prior to scheduled hearings several parties proposed a settlement of nonfirm rate issues. TURN opposed the settlement.

1 34 Cal. PUC 2d 199, 364-378 (1989).

In D.91-07-042, signed July 24, 1991, the Commission rejected the settlement and ordered the resumption of evidentiary hearings. The hearings have been completed, but no decision has been reached on the unresolved nonfirm rate issues.

Pursuant to Rule 76.56 of the Commission's Rules of Practice and Procedure, TURN filed a request for \$29,979.08 in compensation for its contribution to D.91-07-042. The request does not cover TURN's work during the subsequent evidentiary hearings. The elements of the request are:

	<u>TURN</u>	
\$ 5,632.00	Attorney Joel Singer (35.2 hours in 1990 x \$160)	
10,150.00	" " " (58.0 hours in 1991 x \$175)	
824.11	Expenses (copying, postage, etc.)	
	<u>JBS Energy, Inc.</u>	
\$ 1,440.00	William Marcus (12.0 hours x \$120)	
10,890.00	Jeffrey Nahigian (181.5 hours x \$60)	
90.00	Gayatri Schilberg (1.0 hour x \$90)	
952.97	Expenses (facsimile, travel, etc.)	
	Subtotal	
+ 13,372.97		
<u>\$29,979.08</u>	Total request	

No party protested or commented on TURN's request. The Commission found TURN eligible for compensation in this proceeding in D.90-01-010.

3. Final Order

Rule 76.56 allows eligible customers to file requests for compensation "[f]ollowing the issuance of a final order or decision by the Commission in the hearing or proceeding." Rule 76.52(h) defines "final order or decision" as "an order or decision that resolves the issue(s) for which compensation is sought." Although D.91-07-042 was not the ultimate order in PG&E's general rate case, it was the final order, as defined by Rule 76.52(h), in the hearing on the merits of the nonfirm rate settlement. Rule 76.56 is satisfied.

4. Substantial Contribution

Under Rule 76.58, in order to award compensation the Commission must find that the customer has made a "substantial contribution," as that term is defined in Rule 76.52(g). TURN claims that substantial contribution is especially clear in this matter because TURN was the only party opposing the nonfirm rate settlement, and the Commission rejected the settlement in response to TURN's arguments. TURN's testimony recommended a nonfirm rate incentive lower than the incentive in the settlement.

We agree that TURN's contribution to D.91-07-042 was substantial, and that TURN's presentation did not duplicate the work of any other party. However, TURN has not justified all of its requested expenses. We will grant compensation for attorney Singer's participation, but we defer consideration of part of the \$13,372.97 in billings from JBS Energy, Inc. In approving D.91-07-042 we relied on TURN's comments on the proposed settlement, but we did not endorse or even test the merits of TURN's testimony. TURN's recommendation for a lower nonfirm rate incentive demonstrated the risk that the settlement incentive might be too high, but D.91-07-042 did not find that the settlement incentive is too high or should be reconstructed in the way that TURN recommends. We judge that one-half of the efforts of JBS Energy, Inc. were devoted to issues resolved in D.91-07-042, and one-half were devoted to the subsequent evidentiary hearings. We will grant TURN compensation for one-half of the hours and other expenses billed by JBS Energy, Inc. TURN may renew, and possibly amend, its request for the remaining half following a final decision on PG&E's nonfirm rates. We reject the alternative to defer consideration of all of the JBS Energy, Inc. billings because it would delay compensation for real contributions to D.91-07-042.

5. Allocation of Costs by Issue

TURN correctly points out that allocation of its costs by issue is not necessary. D.91-07-042 considered only a single issue, the reasonableness of the proposed nonfirm rate settlement.

6. Computation of Compensation

Rule 76.60 requires that in calculating compensation, the Commission must consider compensation rates for persons of comparable training and experience and who offer similar services. TURN claims that attorney Singer should be compensated at hourly rates of \$160 for 1990 work and \$175 for 1991 work. In support of its claim, TURN provided an excerpt of a 1990 survey by In Counsel magazine. The survey shows hourly rates for six major law firms in San Francisco. Average reported rates are: \$292.50 (high partner), \$196.67 (low partner), \$192.50 (high associate), and \$98.33 (low associate). Singer entered the California bar in 1981 and is experienced in energy matters before the Commission. In D.91-04-054, the Commission increased Singer's hourly rate from \$140 to \$160 in awarding TURN compensation for contributions to D.90-12-066. That award included some work performed in 1991. In D.91-11-066, the Commission awarded Singer \$160 per hour for contributions to D.90-12-116 and D.91-04-033.

We deny the request to increase Singer's hourly rate for 1991 work from \$160 to \$175. Although we have previously used survey results to test the reasonableness of hourly rates, we have not tied or indexed compensation rates to survey results. TURN has not shown that the In Counsel survey reflects any increase in hourly rates from 1990 to 1991. Our decision is consistent with D.92-02-032, in which we awarded TURN compensation for the 1991 work of attorney Tom Long at an hourly rate of \$160, matching Long's 1990 rate.

We accept that most of the requested hours for Singer's work contributed to D.91-07-042. We will reduce Singer's compensable time by 0.9 hours to reflect work performed after

July 1, 1991, the date that TURN filed reply comments to the proposed decision that resulted in D.91-07-042. The subsequent time was devoted to review of the reply comments of other parties and review of the eventual decision, activities which did not contribute to D.91-07-042.

The requested hourly rates for JBS Energy, Inc. staff are the standard rates for work performed for TURN. The Commission has awarded TURN compensation at these rates in D.90-09-049, D.91-04-054, D.91-09-023, and D.91-11-067. We will grant TURN's request for \$824.11 in office expenses, which are only 3.7% of the award.

The adopted compensation award is:

\$14,768.00	Attorney Joel Singer (92.3 hours x \$160)
824.11	TURN expenses (copying, postage, etc.)
<u>+ 6,686.49</u>	JBS Energy, Inc.
\$22,278.60	Total award

Consistent with previous Commission decisions, we will order that interest be paid on this amount, commencing on the 75th day after TURN filed its compensation request. Pursuant to Rule 76.57, the Commission may audit TURN's records and books to the extent necessary to verify the basis for this award.

Findings of Fact

1. TURN has requested \$29,979.08 in compensation for its contribution to D.91-07-042.
2. No party protested or commented on TURN's request.
3. TURN has made a substantial contribution to D.91-07-042.
4. Allocation of TURN's costs by issue is not necessary.
5. TURN has not justified an hourly rate of \$175 for the work of attorney Joel Singer in 1991.
6. An hourly rate of \$160 for the work of attorney Joel Singer is fair and reasonable.

7. The hourly rates requested for JBS Energy, Inc. staff have been adopted in previous compensation decisions by the Commission and are fair and reasonable.

8. Compensation for 92.3 hours of work by attorney Joel Singer is reasonable and should be adopted.

9. Compensation for one-half of the hours and other expenses billed by JBS Energy, Inc. is reasonable and should be adopted.

Conclusions of Law

1. TURN is eligible for compensation in this proceeding.

2. TURN should be compensated \$22,278.60 plus interest commencing on the 75th day after TURN filed its request.

3. The Commission may audit TURN's records and books to the extent necessary to verify the basis for this award.

4. TURN should be authorized to renew or amend its request for JBS Energy, Inc. billings not awarded by this decision, following a final decision in the nonfirm rate phase of this proceeding.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is awarded \$22,278.60, plus interest, in compensation for its contribution to Decision 91-07-042.

2. TURN is authorized to renew or amend its request for JBS Energy, Inc. billings not awarded by this decision, following a final decision in the nonfirm rate phase of this proceeding.

3. Pacific Gas and Electric Company shall, within 30 days of the effective date of this decision, pay TURN \$22,278.60 plus interest at the balancing account interest rate applied to the

A.88-12-005, I:89-03-033 ALJ/J../tcg

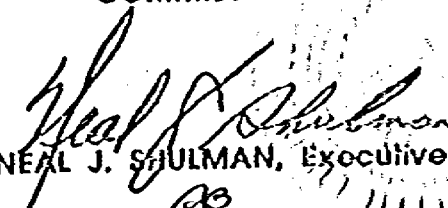
Electric Revenue Adjustment Account, commencing December 9, 1991
until payment is made.

This order becomes effective 30 days from today.

Dated April 22, 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