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Decision 92-05-072 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to adjust its electric rates effective November 1, 1991; and to Adjust its Gas Rates Effective January 1, 1992; and for Commission Order finding that PG&E's gas and electric operations during the Reasonableness Review period from January 1, 1990 to December 31, 1990, were prudent.

ORIGINAL

Application 91-04-003
(Filed April 1, 1991)

(U 39 K)

O P I N I O N

Toward Utility Rate Normalization (TURN) requests compensation of \$63,422.77 for its contribution to Decisions (D.) 91-11-056, 91-12-015, and 91-12-061 in Pacific Gas and Electric Company's (PG&E) 1991 Energy Cost Adjustment Clause (ECAC) proceeding. We find that TURN made a substantial contribution to these decisions, and we award compensation of \$52,374.52.

TURN's Request

By D.92-02-031, we found TURN eligible for compensation for substantial contributions to adopted decisions in this proceeding. TURN filed a request for compensation on March 9, 1992. Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

'Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding.'

Rule 76.52(h) defines "final order or decision" to mean "an order or decision that resolves the issue(s) for which compensation is sought." The ECAC decisions cited by TURN resolve the issues for which TURN seeks compensation. In cases when, as here, the decision granting eligibility was issued after the decisions for which compensation is sought, the Commission has calculated the 30-day filing period for the request for compensation from the date the eligibility decision was issued. (See, e.g., D.89-05-072.) D.92-02-031 was issued on February 6, 1992. TURN's filing of March 9 meets the time limits and other requirements of Rule 76.56.

Substantial Contribution

Rule 76.58 requires the Commission to determine whether the intervenor has made a substantial contribution to the Commission's decision, to describe that substantial contribution and to set the amount of the compensation to be awarded. According to Rule 76.52(g), an intervenor has made a "substantial contribution" when:

"...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."

TURN asserts that it made a substantial contribution in the following areas: (1) natural gas price forecasts, (2) customer energy efficiency costs, and (3) revenue allocation.

Natural Gas Price Forecasts

TURN asserts that its testimony on gas prices provided the factual basis for the Commission to adopt a gas price forecast below the Division of Ratepayer Advocate's (DRA) initial forecast. The adopted gas price in D.91-11-056 relied upon the joint

recommendation of TURN, PG&E, and DRA which incorporated a price below DRA's or PG&E's initial forecast.

TURN also opposed inclusion of the Tier II gas rate in modeling the dispatch of PG&E's electric generation. TURN actively supported this position through testimony, cross-examination, and briefs. TURN asserts that the Commission's adoption of its position reduced ratepayer costs.

We conclude that TURN has substantially contributed on the issues of natural gas price forecasts.

Customer Energy Efficiency

PG&E's 1991 ECAC proceeding included an entire subphase devoted to Customer Energy Efficiency (CEE) program and incentive cost increases. TURN participated in this proceeding by sponsoring a witness, engaging in cross-examination, and submitting legal briefs. While it did not perform a program-by-program review of PG&E's request for increased funding, TURN did challenge the factual basis for the funding requests for a number of proposed programs of PG&E. TURN also sponsored a joint recommendation with DRA and PG&E to have the Commission Advisory and Compliance Division (CACD) audit PG&E's customized rebate program and to make incentive payments under the program subject to refund.

We conclude that TURN has substantially contributed to our decision on CEE-related issues. Although we did not adopt all of TURN's recommendations, D.91-12-015 did draw upon the contributions of TURN in concluding the support for certain programs was deficient and in adopting the joint recommendation on the customized rebate program audit.

Revenue Allocation Issues

The revenue allocation phase of the ECAC proceeding addressed the issue of the appropriate cap to place on revenue increases allocated to agricultural customers. In D.91-12-061, while we adopted a cap of system-average percentage change (SAPC), our action was compelled by legislation enacted after the

conclusion of evidentiary hearings. Absent such legislation, we noted that the record in the proceeding supported a cap of 5% above SAPC, and we essentially rejected the positions of agricultural intervenors. TURN states that it substantially contributed to D.91-12-061 in refuting the contention of the agricultural intervenors that no increase above SAPC was warranted.

We conclude that TURN has made a substantial contribution to D.91-12-061 with respect to revenue allocation. In stating our findings as to the validity of a 5% cap as a matter of policy, we drew significantly upon the evidence presented by TURN.

Claim for Hours

TURN requests compensation for 280.8 hours for Joel Singer and 26.75 hours for Michel Florio. TURN documented the claimed hours by presenting a daily breakdown of hours by issue area and task description. The hourly breakdown presented by TURN reasonably supports its claim for total hours for each of its two representatives, and we accordingly award compensation for all hours claimed.

Hourly Rates for Attorney and Expert Witness Fees

TURN requests an hourly rate of \$225 for Florio, TURN's senior attorney. Florio had overall supervisory responsibility for this case. He also served as TURN's attorney while Singer was on the witness stand and after Singer left TURN. Florio was also TURN's witness on gas price issues.

TURN states that it filed full documentation supporting the \$225 hourly rate in Application 91-03-039. In D.92-03-067, we denied TURN's request for the \$225 hourly rate for Florio, concluding such a level was excessive. Instead, we limited his hourly rate to \$190, the same level we previously awarded in D.91-12-055. Consistent with D.92-03-067, we will authorize \$190/hr. for Florio's time spent in this proceeding.

TURN seeks an hourly rate of \$175 for Singer, representing a \$15/hr., or 9.3% increase, over the rate awarded

Singer in 1990. Based upon a June 1991 survey in Of Counsel magazine, an average rate for attorneys in the "high associate" category in large San Francisco firms is \$193. One out of eleven firms reported a high associate rate below \$175.

As we stated in D.92-03-067, the country is in recession, government employee salaries are being reduced, and lawyers are being laid off from law firms due to lack of work. Under the circumstances, this is not the time to increase hourly fees, especially when it is the public that pays for them. Consistent with our findings on Florio's adopted hourly rate, we will limit Singer's hourly rate to \$160, representing the level of his award for 1990.

Expert Witness Fee Enhancement

Singer appeared as TURN's expert witness on the CEE phase of the proceeding. Since Singer acted in the dual role of TURN's attorney and expert witness on this issue, TURN seeks a \$25 enhancement in Singer's hourly rate for his claim of 176.6 hours spent in this capacity. TURN's requested \$25 enhancement is consistent with our past practice. For example, in D.85-10-009, we granted TURN's representative a \$25/hr. enhancement to compensate for performing such a dual role. TURN's request for the \$25 enhancement applicable to 176.6 hours will be granted since Singer's dual role in the CEE phase clearly went beyond the normal duties and responsibilities of an attorney.

General Overhead

TURN presents a request to recover expenses totaling \$1,149.02, covering photocopies, postage, long distance phone calls, and facsimiles. These general overhead expenses are reasonable, given the number of hours expended by TURN in this proceeding.

Total Award

PG&E shall pay \$52,374.52 to TURN as a total award of intervenor fees. As discussed in previous Commission decisions,

this order will provide for interest at the three-month commercial paper interest rate commencing on May 24, 1992 (the 76th 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 CACD. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by TURN in support of all claims for intervenor compensation. Such record keeping 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. TURN requested compensation totaling \$63,422.77 for its contributions to D.91-11-056, D.91-12-015, and D.91-12-061.
2. TURN was found eligible for compensation in D.92-02-031.
3. TURN made a significant contribution in the above-referenced decisions on the issues of gas price forecasting, customer energy efficiency, and revenue allocation.
4. The hours claimed for TURN's participation in this proceeding are reasonable.
5. Reasonable hourly fees for TURN's representatives are \$190/hr. for Florio and \$160/hr. for Singer, plus a \$25/hr. adder for Singer's time spent in the dual role of attorney and expert witness.
6. The hours expended billed at the related fee rates found reasonable result in the following fees:

For Michel Florio:		
26.75 hours @ \$190	=	\$ 5,082.50
For Joel Singer:		
176.60 hours @ \$185	=	\$32,671
(as attorney/witness)		
84.20 hours @ \$160	=	\$13,472
(as attorney only)		
Total Reasonable Fees	=	\$51,225.50

7. TURN's overhead expenses of \$1,149.02 for photocopies, postage, long distance phone calls, and facsimiles are reasonable.

Conclusions of Law

1. TURN made a substantial contribution to D.91-11-056, D.91-12-015, and D.91-12-061.
2. Reasonable compensation for TURN's contribution to the above-referenced decisions is \$52,374.52.
3. PG&E should be ordered to pay TURN this amount plus accrued interest between May 24, 1992 and the final date of payment.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company shall pay Toward Utility Rate Normalization (TURN) \$52,374.52 within 30 days as compensation for TURN's substantial contribution in this proceeding, plus accrued interest, if any, between May 24, 1992 and the final date of payment.

This order is effective today.

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

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

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

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


NEAL J. SHULMAN, Executive Director