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Decision 92-08-017 August 11, 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, 1989, in its
Annual Cost Allocation proceeding.

ORIGINAL
Application 89-04-021
(Filed April 12, 1989)

O P I N I O N

On May 20, 1992, Toward Utility Rate Normalization (TURN) filed a request compensation for its contributions to Decisions (D.) 90-01-015 and D.90-05-047 in this proceeding, Southern California Gas Company's (SoCalGas) first Annual Cost Allocation Proceeding (ACAP). We grant TURN compensation in the amount of \$56,155.

I. Background

The purpose of ACAPs (more recently biennial cost allocation proceedings, BCAPS) is to estimate certain gas utility costs and revenues and to adjust rates accordingly. In this proceeding, the development of these estimates was controversial mainly because SoCalGas is at risk for 25% of noncore revenue recovery between cost allocation decisions. The methods for developing estimates were also controversial because this was the first proceeding of its kind for SoCalGas and several issues arose during this ACAP had not been addressed by the Commission in previous ACAP decisions.

TURN participated in this proceeding by attending hearings, providing testimony, and filing briefs. TURN's requests compensation for these efforts where they lead to the Commission's adoption of TURN recommendations.

II. TURN's Request for a Finding of Eligibility

Rule 76.54 of the California PUC's Rules of Practice and Procedure requires filing of a "Request for Finding of Eligibility for Compensation" within 30 days of the first prehearing conference or within 45 days of the close of the evidentiary record. On September 1, 1989, TURN filed for a finding of eligibility in this proceeding, within 45 days of the close of the evidentiary record.¹

Rule 76.54(a) requires that a request for finding of eligibility include four items:

- (1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds;
- (2) A statement of issues that the customer intends to raise in the hearing or proceeding;
- (3) An estimate of the compensation that will be sought; and
- (4) A budget for the customer's presentation.

The adequacy of TURN's filing on each of these items is addressed below.

A. Significant Financial Hardship

D.89-04-021 found TURN to have met its burden of showing financial hardship for calendar year 1989. We apply such findings

¹ We deferred ruling on TURN's request in D.90-01-015. More recently, we have deferred ruling on the request to accommodate an informal request by TURN to provide additional time for drafting its request for compensation.

to all subsequent requests for finding of eligibility during the same calendar year. Therefore, the requirements of Rule 76.54(a)(1) have been satisfied.

B. Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. TURN states that the issues raised by it in this proceeding are already matters of record, particularly as set forth in its prepared testimony and its participation in the stipulation. TURN addressed a wide variety of issues, including the forecast of interutility capacity, gas costs, and aspects of cost allocation, and rate design.

A review of the record and this decision provide clear evidence that TURN has complied with Rule 76.54(a)(2).

C. Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. In its request for finding of eligibility, TURN estimated it would request \$52,500 for its work in this case, based on an assumed 250 hours of attorney/witness time at a proposed hourly rate of \$200, plus \$2,500 in expenses, primarily postage and copying expenses.

TURN has complied with Rule 76.54(a)(3).

D. Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. As discussed above, TURN's estimated budget for this proceeding is \$52,500.

We conclude that TURN is eligible for an award of compensation for its participation in this proceeding.

TURN has complied with Rule 76.54(a)(4).

II. TURN'S Compensation Request

Article 18.7 of our rules contains the requirements to be met by intervenors seeking compensation "for reasonable advocate's

fees, reasonable expert witness fees, and other reasonable costs of participation or intervention in any proceeding of the Commission initiated on or after January 1, 1985, to modify a rate or establish a fact or rule that may influence a rate."

TURN states it made a "substantial contribution" to the decisions in this proceeding. Rule 76.56 requires a showing of the intervenor's substantial contribution, and Rule 76.52(g) defines substantial contribution as one which:

...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 its accomplishments in this proceeding "far exceeded these minimum requirements." TURN states it prevailed at least in part on each of the five major issue areas identified by the Commission in D.90-01-015: (1) gas throughput, (2) cost of gas, (3) revenue requirement, (4) cost allocation and rate design. TURN's contributions in each of these categories is summarized below.

A. Gas Throughput

TURN states it made several contributions to the Commission's adopted estimates of gas throughput. Specifically, we adopted TURN's recommendations regarding:

An adjustment to reflect the assumption of average hydroelectric conditions;

Accounting for the shutdown of the Rancho Seco nuclear plant;

Utilization of the El Paso pipeline system;

Development of the appropriate discount adjustment methodology, primarily the Commission's rejection of SoCalGas practical adjustment.

B. Cost of Gas

TURN states it made the following contributions to the Commission's adopted gas cost estimates. Specifically, we adopted TURNs recommendation regarding:

The forecasted cost of Elk Hills gas, specifically, the Commission's assumption that the cost of Elk Hills gas would be priced at the core weighted average cost of gas;

The inclusion of interutility transportation in the cost of spot gas rather than being offset against the forecast of interutility revenues;

An error in SoCalGas' calculation of minimum purchase obligation transition costs.

C. Revenue Requirement

TURN states it made several contributions to the Commission's adopted revenue requirement. Specifically, TURN proposed the following:

The calculation of marketing costs in setting SoCalGas' brokerage fee;

The rejection of SoCalGas' proposed recovery of a \$14.4 million "shortfall" in the Cogeneration Shortfall Account;

The elimination of the Cogeneration Shortfall Account;

The amortization period for certain balancing account undercollections.

D. Cost Allocation and Rate Design

TURN states it made several contributions to the Commission's adopted cost allocation and rate design. Specifically, TURN proposed the following:

Deferral of issues relating to costs studies of administrative and general expenses and lost and unaccounted for gas costs.

A rejection of SoCalGas' proposal to increase the residential customer charge;

Rejection of SoCalGas' proposed enhance oil
recovery default rate.

E. Discussion

TURN correctly describes its participation in this proceeding. We adopted these several recommendations by TURN based on TURN's expert testimony and thoughtful analysis. We conclude that TURN made a substantial contribution to D.90-01-015 and D.90-05-047.

III. Itemization of Costs

TURN seeks compensation for 271.5 hours of time for its attorney, Mr. Florio. Of these hours, 245 are billed at a rate of \$200 and 26.5 are billed at a rate of \$175. According to TURN, the higher rate for Mr. Florio reflects a \$25 "efficiency adder" to the base fee of \$175 because Mr. Florio appeared in a dual role as both attorney and witness. TURN also seeks 5 hours of time for its attorney, Mr. Singer, at a rate of \$140. TURN provides a break down of how these attorneys spent their time. TURN also seeks \$1,818 for copying, postage, and related expenses.

A. The Proposed Attorney's Rate

TURN's requested attorney rate for Mr. Florio is consistent with the rate awarded to TURN for Mr. Florio's participation in other proceedings during the same time period. For example, we awarded TURN \$175 for Mr. Florio's contributions to D.90-01-050. Similarly, TURN's requested rate for Mr. Singer is the same rate we awarded to TURN for Mr. Singer's contributions during mid-1989. We therefore find that the requested attorney's fees for the work of Mr. Florio and Mr. Singer are reasonable.

B. The Proposed "Efficiency Adder"

TURN seeks a \$25 "efficiency adder" for 245 hours of work which Mr. Florio performed as both attorney and technical expert. TURN states the Commission has routinely recognized that a "hybrid"

appearance by an individual acting as both attorney and witness is highly cost-effective for ratepayers because they avoid paying rates for both an attorney and a technical expert. TURN cites D.85-10-009 where the Commission granted an "adder" to recognize the efficiency of an attorney also acting as a technical expert.

In this case, Mr. Florio's participation clearly went beyond the normal duties and responsibilities of an attorney. Mr. Florio testified on several major issues. In that role he proposed various technical adjustments to SoCalGas' showing. Accordingly, we agree that a \$25 adder is appropriate for all hours for which Mr. Florio testified and performed technical analysis, consistent with previous decisions where intervenors have played dual roles as attorneys and expert witnesses.

C. The Requested Hours

TURN states its request for attorney time was consistent with D.85-08-012, which determined guidelines for allocating time to issues on which an intervenor prevails. TURN states that many of its hours were not easily allocated because of the complexity of the ACAP, in which many different issues interact. TURN comments that its estimates are reasonable and do not present serious allocation problems because it prevailed on most of the issues it addressed in this case.

We agree that TURN's allocation of time is reasonable and we will adopt it.

D. Other Reasonable Costs

TURN seeks \$1,818 for postage, copying, and parking costs. These costs are reasonable and will be adopted.

IV. Conclusion

TURN successfully litigated several important and highly technical issues in this proceeding. Its requested hourly fees are reasonable and the time spent on these matters is reasonable. We

will therefore award TURN the entire amount it requests, \$56,155.00.

As set forth in past compensation decisions, this order will provide for interest commencing the 75th day after the filing of TURN's compensation request. Interest is calculated at the three-month commercial paper rate beginning on August 3, 1992 and will continue until the utility makes its full payment of the award.

Findings of Fact

1. TURN was found to have shown significant financial hardship for calendar year 1989 in D.89-04-021.
2. TURN requests \$56,155 in compensation for its participation in the cost allocation proceeding which was the first of its kind for SoCalGas.
3. TURN prevailed on several major issues in this proceeding and therefore made a substantial contribution to D.90-01-015 and D.90-05-047.
4. TURN's request for an hourly fee of \$175 for Mr. Florio is consistent with fees awarded to TURN for Mr. Florio's participation during the same timeframe as this proceeding.
5. TURN's request for an hourly fee of \$140 for Mr. Singer is consistent with fees awarded to TURN for Mr. Singer's participation during the same timeframe as this proceeding.
6. Mr. Florio's participation in this case went beyond the normal duties and responsibilities of an attorney in that Mr. Florio testified on several major issues.
7. TURN's allocation of time between issues is consistent with Commission guidelines.

Conclusions of Law

1. TURN should be found eligible for compensation in this proceeding.
2. TURN's request for an hourly attorney fee rate of \$175 for Michael Florio is reasonable and should be adopted.

3. TURN's request for a \$25 "efficiency adder" to the basic fee to recognize Florio's dual role as attorney and witness should be granted.

4. TURN's request for an hourly attorney fee rate of \$140 for Joel Singer is reasonable and should be adopted.

5. TURN's allocation of time to various issues is reasonable and should be adopted.

6. TURN's request for \$1,818 in postage, copying, and parking costs is reasonable and should be granted.

7. Because no further matters are pending, this proceeding should be closed.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization's (TURN) request for a finding of eligibility in this proceeding is granted.

2. TURN's request for compensation in the amount of \$56,155 is granted.

3. Within 30 days of the date of this order, Southern California Gas Company shall remit to TURN \$56,155.00 plus any applicable interest. Interest shall be calculated at the three-month commercial paper rate beginning on August 3, 1992, and shall continue until the utility makes full payment of the award granted herein.

4. This proceeding is closed.

This order is effective today.

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

DANIEL Wm. FESSLER
President

PATRICIA M. ECKERT

NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director