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Decision 92-11-002 November 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Authority to Increase its Authorized Level of Base Rate Revenue Under the Electric Revenue Adjustment Mechanism for Service Rendered Beginning January 1, 1992 and to Reflect this Increase in Rates.

ORIGINAL
Application 90-12-018
(Filed December 7, 1990)

And Related Matters.

I.89-12-025
(Filed December 18, 1989)

I.91-02-079
(Filed February 21, 1991)

Case 92-07-056
(Filed July 27, 1992)

OPINION ON REQUEST FOR COMPENSATION

1. Summary of Decision

Toward Utility Rate Normalization (TURN) is awarded \$21,859.63 in compensation for its substantial contribution to Decision (D.) 92-06-020, which resolved Phase 2 issues (revenue allocation and rate design) in the test year 1992 general rate case (GRC) of Southern California Edison Company (Edison).

2. Background

TURN is eligible for compensation for its participation in all phases of this consolidated proceeding pursuant to D.92-04-015. By D.92-08-030 the Commission awarded TURN compensation of \$99,221.00 for its substantial contribution to

D.91-12-076 in Phase 1 of this proceeding.¹ On July 8, 1992, TURN filed a request for \$29,881.63 in compensation for its contributions to D.92-06-020. This decision addresses that request.

3. Final Order

Rule 76.56² 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 Edison's GRC remains an open proceeding, D.92-06-020 is a final order resolving Phase 2 issues for which compensation is sought by TURN.

4. Substantial Contribution

Under Rule 76.58, 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 it has made substantial contributions to the resolution of three specific issues: the baseline allowance issue, the Assembly Bill (AB) 2236 issue, and the Schedule TOU-D issue. As we explain below, we agree that TURN has substantially contributed to D.92-06-020 with respect to each of these issues.

4.1 Baseline Allowance

Edison sought to maintain its residential baseline allowances at the midpoint of the range set by Public Utilities (PU) Code § 739(d)(1). Division of Ratepayer Advocates (DRA), on the other hand, proposed reducing the allowances to the statutory

¹ On September 3, 1992, TURN filed a petition for modification of D.92-08-030 to correct an error in its Phase 1 compensation request.

² All such references are to the Commission's Rules of Practice and Procedure.

minimum. TURN joined Edison in opposition to DRA's proposal. As noted by TURN, the Commission relied heavily on the testimony and arguments presented by TURN in rejecting DRA's proposal. TURN substantially assisted the Commission and is entitled to compensation for its contribution on this issue.

4.2 AB 2236

AB 2236 imposed a five-month moratorium on any rate increases for agricultural and pumping customers in excess of system average increases. The moratorium expired on June 1, 1992, but the Commission's revenue allocation and rate design decision had originally been scheduled for consideration prior to that date. One issue which arose in Phase 2 was whether AB 2236 limited the rate increases that could be imposed on Edison's agricultural and pumping customers. Since the Commission issued D.92-06-020 after the June 1 expiration date, the moratorium was ultimately rendered clearly inapplicable. That outcome had been suggested by TURN, among other parties.

Rule 76.53(c) provides for reducing compensation awards in proportion to the amount of duplication of effort by other parties. TURN's suggestion for deferring the Phase 2 decision duplicated suggestions of several other parties, and a substantial "proportionate" reduction would be warranted on that basis. On the other hand, TURN did bring to our attention the fact that application of the AB 2236 moratorium in this proceeding would have had long-lasting effects on Edison's revenue allocation beyond the five months intended by the Legislature. Under the circumstances, we believe TURN is entitled to compensation for 50% of the time which it spent directly on this issue.

4.3 Schedule TOU-D

Edison proposed the continuation of its Schedule TOU-D (residential time-of-use rates) with no baseline allowance. TURN supported continuation of the schedule only if it included a baseline allowance. The Commission adopted a DRA proposal to

implement two TOU-D schedules, one with a baseline allowance and one without. Although TURN's preferred alternative was not adopted, TURN assisted the Commission by demonstrating the importance of keeping the time-of-use option attractive to smaller users through a baseline allowance.

5. Calculation of the Award

Having determined that TURN substantially assisted the Commission and that it therefore made a substantial contribution to D.92-06-020, we now address the calculation of the award to which TURN is entitled. The elements of TURN's request are as follows:

Attorney Fees:

K. J. Reidhead				
136.4 hours	X	\$150	=	\$20,460.00
M. Florio				
6.5 hours	X	\$190	=	1,235.00
R. Finkelstein				
22 hours	X	\$150	=	3,300.00

Witness/Consulting Fees:

W. Marcus -- JBS Energy, Inc.				
22.5 hours	X	\$125	=	2,812.50
J. Nahigian -- JBS Energy, Inc.				
3 hours	X	\$70	=	210.00

Other Reasonable Costs:

Copying Expenses	1,082.40
Postage Costs	393.69
Long-distance Telephone	33.27
FAX Charges	24.44
Federal Express	24.50
Witness Expenses	<u>335.83</u>
Total	\$29,881.63 ³

³ We calculate the total of the above figures as \$29,911.63.

5.1 Hours Claimed

5.1.1 Attorney K. Justin Reidhead

The bulk of TURN's request is for work performed by K. Justin Reidhead. TURN presented a detailed breakdown of the hours charged by Reidhead. TURN states that it eliminated from its claim any hours which it found to be excessive for any particular task. In addition, due to the number of issues upon which its position did not prevail, TURN has claimed only half its hours for "general preparation" time. Of 162.1 hours charged to this proceeding by Reidhead, TURN claims compensation for 136.4 hours. TURN's detailed daily log for Reidhead is restated and summarized below:

	<u>Total Hours</u>	<u>Hours Claimed</u>
General preparation time; may vary with number of issues addressed	36.41	18.18
Basic activities; do not vary by number of issues addressed	35.03	35.03
Hearing preparation	23.90	23.90
Hearing time	<u>48.30</u>	<u>44.70</u>
Subtotal-not allocable by issue	143.64	121.81
Residential rate design	10.60	10.60
AB 2236	4.00	4.00
Interruptible rates	2.40	0.00
Reserve margin issue	<u>1.50</u>	<u>0.00</u>
Subtotal-allocable by issue	<u>18.50</u>	<u>14.60</u>
Total hours	<u>162.14</u>	<u>136.41</u>

TURN directs our attention to D.85-08-012,⁴ where, in announcing proposed guidelines for allocation of hours by issue, the Commission identified three categories of work activities that allow for differing degrees of issue-specific allocation of time:

4 Re Southern California Gas Company, 18 CPUC 2d 485.

1. Allocation by issue is straightforward. The Commission included time spent on testimony, briefs, applications for rehearing, and petitions for modification in this category since they are usually organized on the basis of issues. (D.85-08-012, p. 14.)
2. Allocation by issue is almost impossible. The Commission acknowledged that in "initially preparing to participate in a case, offset or otherwise, it is often simply impossible to segregate hours by issue..." The Commission therefore saw no reason to require a strict allocation of initial general preparation time. It determined that if an intervenor makes a substantial contribution on all or most issues it addresses, or if the significance of the issues on which the intervenor prevails justifies full compensation, it should receive compensation for all of its initial preparation time. Where the intervenor is less successful, initial preparation time may be compensated on a pro-rata basis according to the proportion of successful issues to total issues addressed. (D.85-08-012, p. 15.)
3. Allocation by issue is problematic, and may depend on the type of the proceeding. The Commission included time spent on discovery in this category, noting that focused discovery which generally occurs later in a proceeding can clearly be allocated by issue.

The Commission also included hearing time in this category. It noted that in certain types of proceedings, such as offset cases, there are difficult barriers to issue-by-issue allocation of hearing time because of the extremely short time frame and the complexity of the issues. An intervenor may be required to be almost continually present at hearings in such cases. The Commission stated it would not hold intervenors to a strict allocation of hearing time by issue, although the burden of preparing careful time records and

making a good faith effort to assign hearing time to issues remained. In other types of hearings, such as general rate cases conducted under the Rate Case Plan, the Commission suggested that the burden of proof be with the intervenor to show that where hearing time is not allocated by issue it is impractical or impossible to do so. (D.85-08-012, pp. 15-16.)

TURN maintains that it has followed the D.85-08-012 guidelines in computing the time components of its request. We agree that for the most part it has done so, but we find that certain aspects of TURN's method of charging time constitute a departure from them.

In discussing the guidelines, the Commission acknowledged the difficulty of allocating time on an issue-by-issue basis for activities such as initial preparation and hearings. (D.85-08-012, pp. 13-14.) Still, it strikes us in this case that TURN has been able to allocate a very limited number of hours on an issue-specific basis. Of 162.14 hours spent on this case by Reidhead, only 18.50 hours, or 11.4%, were allocated by issue. Similarly, of the 136.41 hours claimed for compensation purposes, only 14.60 hours, or 10.7%, were issue-specific.⁵ This small proportion leads us to carefully review the details of the hours claimed under the guidelines announced in D.85-08-012.

As noted, the guidelines are based in part on the assumption that it is often impossible to segregate hours by issue at the initial stage of a case, when the intervenor is still learning about the case and identifying issues. Arguably, the implication is that preparation and similar work which is performed

⁵ By contrast, in D.92-08-030 (the Phase 1 compensation award to TURN) we noted that TURN's attorney spent 81.5 out of 458.5 hours, or 17.8%, on "general" activities. The remaining 82.2% of his time was allocated to specific issues.

after the initial stages of a case should either be allocated by issue or excluded from compensation awards altogether. We are not inclined to apply such a harsh standard here. While we remain concerned about the small proportion of allocated hours, we are persuaded by TURN's contention that the "intricate complexity" of this case rendered detailed segregation of hours next to impossible, even for activities that occurred after the proceeding was well under way and the issues were clearly identified.

However, in this case, TURN acknowledges that it has not contributed to all or most of the issues it has addressed, and, consistent with the guidelines, it has appropriately reduced its hours for general preparation time by 50%.⁶ We find that the hours for TURN's categories of "basic activities" and "hearing preparation" should be similarly reduced. We find insufficient justification for granting full compensation for these common hours. In allowing compensation for "post-initial" preparation time and similar activities, we will not at the same time abandon the principle which provides for pro-rata adjustments of common hours on the basis of the intervenor's success in addressing issues.

We will allow full compensation for hours spent in hearings. TURN has met the burden contemplated in the guidelines as they apply to general rate cases. As TURN points out, it was

⁶ For purposes of allocating time spent in general preparation, TURN developed the 50% factor on the basis of its success in addressing two issues (residential rate design and AB 2236) and its lack of success in addressing two issues (interruptible rates and the reserve margin issue). An alternate approach would be to subdivide residential rate design into the three component issues addressed by TURN: the baseline allowance, Schedule TOU-D, and the tier differential. As noted above, TURN provided a substantial contribution on the first two residential rate design issues. It did not do so on the tier differential issue. This approach yields a success rate of three of six issues, or 50%.

not unusual for many subjects to be covered in a single day of hearings, often by the same witness. We agree that Reidhead's presence was required for the majority of the hearing dates.

TURN sought three distinct outcomes for residential rate design, including the baseline allowance and Schedule TOU-D issues for which it provided contributions and the tier differential issue for which it did not. TURN allocated 10.6 hours to the broad category of residential rate design but did not allocate its hours more finely. Without more information, we believe it is fair to assume that the three residential rate design issues required equal amounts of time. We will thus reduce the hours claimed for residential rate design by one-third to reflect the lack of success on the tier differential issue.

The hours allowed for Reidhead are shown below:

General preparation time	18.18
Basic activities	17.52
Hearing preparation	11.95
Hearing time	44.70
Subtotal-not allocable by issue	92.35
Baseline allowance	3.53
Schedule TOU-D	3.53
AB 2236	4.00
Subtotal-allocable by issue	11.06
Total hours	103.41

5.1.2 Attorney Michel Florio

TURN states that Florio's involvement in this case was limited to review of the testimony and briefs submitted by TURN and consultation regarding preparation of the compensation request. Since TURN did not present a breakdown of the total of the 6.5 hours by issue, we will apply a pro rata adjustment. We find it reasonable to assume that one-third of Florio's time was spent reviewing testimony and briefs on issues where TURN was successful, one-third was spent on unsuccessful activities, and one-third on

the compensation request. Accordingly, we will reduce the hours claimed by one-third.

5.1.3 Attorney Robert Finkelstein

Finkelstein's involvement in this case is limited to preparation of the compensation request, and it is not necessary to allocate his hours by issue. We address our concern about the number of hours in our subsequent discussion of the hourly rate claimed for Finkelstein.

5.1.4 Expert Witnesses

TURN presented a summary of the hours and amounts billed by JBS Energy, Inc. on behalf of TURN's expert witness William B. Marcus and his associate, Jeff Nahigian. TURN states that due to the limited success addressing some issues, the vast majority of the work performed by JBS Energy is not claimed. A breakdown of the hours claimed by JBS Energy shows that Mr. Marcus worked 72 hours but TURN claims compensation for 22.5 hours. Similarly, Nahigian worked 42.75 hours but TURN claims only three hours. We find that TURN's claim for expert witness hours is reasonable and should be granted.

5.2 Hourly Rates

5.2.1 Attorney K. Justin Reidhead

TURN seeks an hourly rate of \$150 for attorney Reidhead, its lead attorney for Phase 2. TURN claims that this rate is justified by market rates commanded by experienced associate attorneys. TURN states that Reidhead has extensive experience in energy regulatory proceedings in Arizona and California. He was admitted to the Arizona bar in 1988 after graduation from Arizona State University College of Law. He worked as a staff attorney for the Arizona Residential Utility Consumer Office (RUCO) shortly after admission to the bar. He was promoted to Senior Attorney in that office in December 1989.

Reidhead joined TURN in October, 1991. He was hired to represent TURN in electricity-related matters before this

Commission. He sat for and passed the California Bar Examination in 1992. He recently returned to Arizona to become RUCO's Chief Counsel. According to TURN, that appointment was made by the agency's executive director in recognition of his experience with utility regulation.

TURN relies on a survey in the June 1991 edition of Of Counsel magazine to support its requested hourly rate. According to TURN, the average hourly rate for San Francisco attorneys in the "High Associate" category is \$193.

While we recognize Reidhead's Arizona experience in utility regulation and subsequent elevation to Chief Counsel of Arizona's RUCO, we cannot ignore the fact that his California experience largely coincided with the period that he worked on this proceeding. Moreover, the bulk of his work on this case occurred in 1991, before he passed the California Bar. We do not have sufficient assurance that "high associates" employed by the San Francisco law firms responding to the Of Counsel survey constitute the relevant market for his services for purposes of this compensation award. We also note that the survey shows a wide range between average hourly rates for "high" and "low" associates: the average for the latter is \$101.

We will award compensation for Reidhead's time at \$140 per hour. We recognize that in D.92-08-015 we recently awarded TURN compensation based on an hourly rate of \$150 for Reidhead. However, a review of Attachment B of that decision shows that the bulk of his time in that proceeding was for work performed during the period January through May 1992.

5.2.2 Attorney Michel Florio

TURN strongly believes that Florio's services should be compensated at \$225 per hour. However, in light of his limited involvement in this case, TURN requests an hourly rate of \$190. TURN notes that this rate was established for Florio in

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D.91-12-055. More recently, it was affirmed in D.92-03-067 and D.92-08-015. We accept TURN's requested rate.

5.2.3 Attorney Robert Finkelstein

TURN seeks an hourly rate of \$150 for Finkelstein's work in preparing this compensation request. Finkelstein is a 1985 graduate of Northeastern University School of Law and a member of the California bar. He worked for four and one-half years as an attorney for DNA-People's Legal Services, the legal services program serving members of the Navajo Nation. In 1990 he joined the staff of Legal Services of Northern California. He joined TURN in March 1992. TURN believes that, like Reidhead, Finkelstein should be deemed the equivalent of an experienced associate. Accordingly, TURN believes that the \$150 rate sought is "very reasonable."

Finkelstein's work in this proceeding was limited to preparation of the compensation request. We note that 22 hours -- almost three days -- were required. This strikes us as excessive given the lack of complexities in this case. By way of comparison, TURN's compensation request in Phase 1 of this GRC required 15 hours even though the number of issues addressed, the number of hours, and the amount of the request were all far greater than here. We would be inclined to reduce the number of hours allowed, but that is not our only alternative. In D.91-12-074 we found that an intervenor's compensation request was "primarily an invoice for services; its preparation did not require a lawyer's skill. We think this task could have been performed by someone with a lower hourly rate (than that of the intervenor's attorney)."

(D.91-12-074, p. 14.) We therefore awarded compensation at one-half the attorney's hourly rate. A similar approach is appropriate here in light of the unique circumstances of this request. We will allow compensation at one-half the hourly rate sought by TURN. In doing so, we do not preclude TURN from seeking compensation for Finkelstein's services at the full market value level in other proceedings where he participates as attorney in a broader range of activities.

5.2.4 Expert Witnesses

The Commission has previously compensated TURN for work by JBS Energy, Inc. at the rates requested in this proceeding. In

D.91-07-037 and D.92-08-030 the Commission approved rates of \$125 per hour for William Marcus and \$70 per hour for Jeffrey Nahigian. Those rates are reasonable for Phase 2.

5.3 Expenses

We find TURN's itemized listing of expenses to be reasonable and will allow compensation in full.

5.4. Computation of Compensation

The adopted compensation award is as follows:

Attorney Fees:

K. J. Reidhead					
103.4 hours	X	\$140	=		\$14,476.00
M. Florio					
4.3 hours	X	\$190	=		817.00
R. Finkelstein					
22 hours	X	\$ 75	=		1,650.00

Witness/Consulting Fees:

W. Marcus -- JBS Energy, Inc.					
22.5 hours	X	\$125	=		2,812.50
J. Nahigian -- JBS Energy, Inc.					
3 hours	X	\$70	=		210.00

Other Reasonable Costs:

Copying Expenses					1,082.40
Postage Costs					393.69
Long-distance Telephone					33.27
FAX Charges					24.44
Federal Express					24.50
Witness Expenses					<u>335.83</u>

Total \$21,859.63

Consistent with previous Commission decisions, we will order that interest be paid on this amount, commencing on September 21, 1992, 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 requests \$29,881.63 in compensation for its contributions to D.92-06-020.
2. No party protested or commented on TURN's request.
3. TURN made substantial contributions to D.92-06-020 in the areas of the residential baseline allowance, AB 2236, and Schedule TOU-D.
4. TURN allocated a very limited proportion of attorney Reidhead's hours on an issue-specific basis.
5. TURN reduced its hours for general preparation time by 50%, but it is also appropriate that the hours for TURN's categories of "basic activities" and "hearing preparation" be similarly reduced.
6. Attorney Reidhead's presence was required for the majority of the hearing dates.
7. TURN sought three distinct outcomes for residential rate design through the positions it took on the baseline allowance, Schedule TOU-D, and the tier differential.
8. Compensation for 103.4 hours of work by attorney K. Justin Reidhead is reasonable and should be adopted.
9. It is reasonable to assume that one-third of Florio's time was spent reviewing testimony and briefs on issues where TURN was successful, one-third was spent on unsuccessful activities, and one-third on the compensation request.
10. Compensation for 4.3 hours of work by attorney Michel Florio is reasonable and should be adopted.
11. Compensation for 22 hours of work by attorney Robert Finkelstein is reasonable and should be adopted.
12. In D.92-08-015 the Commission awarded TURN compensation based on an hourly rate of \$150 for Reidhead, but the bulk of his

time in that proceeding was for work performed during the period January through May 1992.

13. TURN has not justified an hourly rate of \$150 for the work of attorney K. Justin Reidhead in Phase 2 of this proceeding; an hourly rate of \$140 is fair and reasonable.

14. An hourly rate of \$190 for the work of attorney Michel Florio is fair and reasonable.

15. An award based on one-half the requested hourly rate for the work of attorney Robert Finkelstein is fair and reasonable in light of the unique circumstances of this proceeding.

16. The requested hours and hourly rates for professional services provided by JBS Energy, Inc. are fair and reasonable for work in Phase 2 of this proceeding.

Conclusions of Law

1. TURN has previously been found eligible for compensation in this proceeding.

2. TURN should be compensated \$21,859.63 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.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is awarded \$21,859.63, plus interest, in compensation for its contributions to Decision 92-06-020.

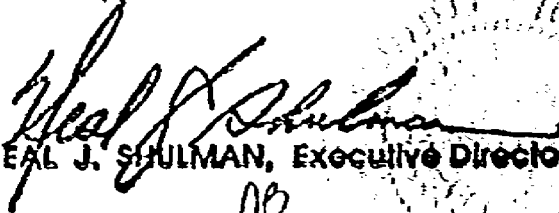
2. Southern California Edison Company shall, within 30 days of the effective date of this decision, pay TURN \$21,859.63, plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G.13, commencing September 21, 1992 until payment is made.

This order is effective today.

Dated November 6, 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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