

Decision S2 08 035 AUG-18 1982

ORIGINAL

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.)
(Electric and Gas))

Application 60153
(Filed December 23, 1980)

(See Decision 93887 for appearances.)

ORDER ON REQUEST FOR
AWARD OF PURPA COMPENSATION

By a petition filed February 24, 1982, Toward Utility Rate Normalization (TURN) requests an award of compensation and fees for its participation in this proceeding. The request is made under Rule 76.06 of our Rules of Practice and Procedure. The amount requested is \$49,527.29, which includes attorney's fees for 493 hours of work at \$75 per hour.

Procedural Matters

The major procedural issue to be decided in this petition is related to the "ripeness" of the petition for decision. Decision (D.) 93887 was issued on December 30, 1981 in this proceeding. By D.82-02-075 dated February 17, 1982, rehearing on D.93887 was granted. The rehearing was to cover several areas which are covered by this petition for fees. D.93887 was not stayed by D.82-02-075.

Pacific Gas and Electric Company (PG&E) argues that since rehearing has been granted on D.93887, this petition for fees is premature and that no decision on compensation should be issued until a final order is issued.

We disagree. Rule 76.06 provides that following any decision or order in a proceeding parties may file for compensation. We could give more credence to PG&E's argument if the effective date of D.93887 had been stayed by D.82-02-075. D.93887 was not stayed, however, and PG&E has been operating under D.93887 since January 1982. There is no reason to postpone our consideration of TURN's petition. Rates are being assessed as set by D.93887; therefore, it is reasonable to consider TURN's petition at this time. It is possible that D.93887 could be modified by our eventual decision on rehearing; however, we cannot ignore that D.93887 has been in effect for most of 1982. ✓

Because TURN was found eligible for Public Utility Regulatory Policies Act (PURPA) compensation in this proceeding by D.92795, the two remaining major issues relate to "substantial contributions" made by TURN and the amount of compensation to be awarded, if any.

Substantial Contribution

TURN alleges that it has substantially contributed to the adoption in D.93887 of PURPA positions related to three of the PURPA standards as defined in Rule 76.02: (1) cost of service, (2) advertising, and (3) information to consumers.

We agree with TURN. Relating to "cost of service", Findings of Fact 64, 65, 66, 77, 78, and 79 of D.93887 (see Appendix B) clearly reflect a substantial contribution made by TURN. Indeed our method of conceptualizing and applying marginal cost was greatly assisted by TURN's presentation as reflected in our discussion regarding marginal cost in the decision.

Findings of Fact 58, 58a, and 59 reflect TURN's contribution to our adoption of its position on advertising.

Finally, our adoption of a requirement that PG&E mail bill inserts showing the effect of the Economic Recovery Tax Act of 1981 was assisted by TURN's position and participation.

Compensation

Of our process of awarding compensation nothing is more difficult to determine than the reasonable allowance for attorney's fees. This determination is very difficult because not only must we adopt a standard of hourly compensation to be used in each separate case, but that standard must be affected by the quality of work that was presented us. Also the number of hours that a party bills for a certain issue must be tempered by how much the party's presentation was relied on to reach our decision.

Attorney's Fees

TURN's request for attorney's fees is for \$75 per hour. TURN cites several civil court cases dealing with the award of attorney's fees, showing awards substantially higher than its request of \$75 per hour.

PG&E argues that TURN should not receive any amount greater than \$50 per hour, which TURN was awarded in D.93371, a Pacific Power & Light Company rate case.

Our standard in this case is essentially established by our Rule 76.02(1) which provides:

"'Reasonable fees' shall be computed at prevailing market rates for persons of comparable training and experience who are offering similar services. In no event shall such fees exceed those paid by the Commission or the utility, whichever is greater, for persons of comparable training and experience who are offering similar services."

A review of our records indicates that in the recent past we have engaged outside counsel and paid in excess of the requested \$75 per hour.¹ With our adjustment of the hours spent on this case, there is no need to adjust TURN's requested \$75 per hour.

Hours

TURN's expense and allocation of attorney's fees hours by issue are shown in the appendix of this decision. The only adjustment that we will make to this request is the number of hours spent on the advertising issue. The presentation by TURN and the extent of our adoption of TURN's position does not warrant an expense of 208 hours at \$75 per hour. This expense shall be adjusted downward by 40% to reflect the extent of our reliance on TURN's presentation for our limited adoption of TURN's position. The following table shows TURN's request and our award in this proceeding.

¹ In Hawaiian Independent Refinery, Inc. v CPUC et al. (1982, U.S. District Court, Hawaii) we retained Shanon & Sakamoto at \$100 per hour. In Individual Truckers v CPUC et al. (1980, U.S. District Court, Northern District of California, No. C-80-0962-WWS) we retained Armour, St. John, Wilcox & Goodin at \$90 per hour.

TABLE 1

	<u>TURN</u>	<u>Adopted</u>
<u>I. Cost of Service</u>		
Attorney Fees 283 hours x \$75	\$21,225.00	\$21,225.00
Witness Fees 147.9 hours x \$70	10,353.00	10,353.00
Other Expenses	<u>1,627.92</u>	<u>1,627.92</u>
	\$33,205.92	\$33,205.92
<u>II. Advertising</u>		
Attorney Fees 208 hours x \$75	\$15,600.00	\$ 9,360.00*
Other Expenses	<u>601.37</u>	<u>601.37</u>
	\$16,201.37	\$ 9,961.37
<u>III. Information to Consumers</u>		
Attorney Fees 2 hours x \$75	\$ 150.00	\$ 150.00
Total of I. II, and III	\$49,557.29	\$43,317.29

* 124.8 hours x \$75.

As shown on the table above, we find no need to adjust any expenses other than attorney's fees regarding the advertising issue.

Findings of Fact

1. By this petition TURN requests an award of \$49,557.29 under Article 18.5 of this Commission's Rules of Practice and Procedure.

2. TURN was previously found eligible for compensation by D.92795 in this proceeding.

3. TURN has made a substantial contribution to the implementation of PURPA in this proceeding which is reflected in D.93887. That contribution covered standards for:

- a. Cost of Service.
- b. Advertising.
- c. Information to Consumers.

4. An award of compensation to TURN in the amount of \$43,317.29 is reasonable.

Conclusion of Law

TURN has complied with the requirements of Article 18.5 of this Commission's Rules of Practice and Procedure and should be awarded compensation in the amount noted in the following order.

IT IS ORDERED that:

1. Within 30 days from the effective date of this order Pacific Gas and Electric Company (PG&E) shall pay to Toward Utility Rate Normalization \$43,317.29.

2. In the first general rate case following this decision, PG&E shall include in its California intrastate revenue requirement an amount sufficient to reimburse it for the \$43,317.29 award (amortized over 2 years).

This order becomes effective 30 days from today.

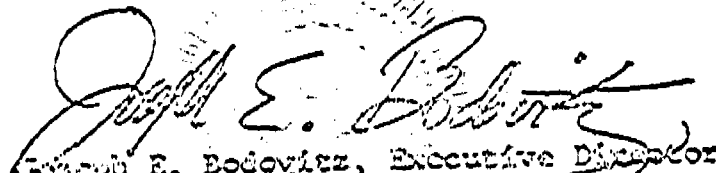
Dated AUG 18 1982, at San Francisco, California.

I will file a concurrence.
/s/ LEONARD M. GRIMES, JR.
Commissioner

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
Commissioners

Commissioner Priscilla C. Grow,
being necessarily absent, did
not participate

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


Joseph E. Bodovitz, Executive Director

Cost of Service

M. Florio - Attorney Fees: 283 hours x \$75	\$ 21,225.00
F. Wells - Witness Fees: 147.9 hours x \$70	\$ 10,353.00
Other Reasonable Costs:	
Witness Travel and Expenses	701.89
Long-Distance phone	124.31
Mailings to Witness	67.19
Copying and Mailing Testimony	303.03
Copying and Mailing Briefs	388.92
TURN Staff Expenses	<u>42.58</u>
Total	\$ 33,205.92

Advertising

M. Florio - Attorney Fees: 52 hours x \$75	\$ 3,900.00
R. Spertus - Attorney/Witness Fees: 156 hours x \$75	\$ 11,700.00
Other Reasonable Costs:	
Copying and Mailing Testimony	365.25
Copying and Mailing Briefs	194.45
TURN Staff Expenses	<u>41.67</u>
Total	\$ 16,201.37

Information to Consumers

M. Florio, Attorney Fees: 2 hours x \$75	<u>\$ 150.00</u>
Total	\$ 150.00
Cost of Service	\$ 33,205.92
Advertising	<u>\$ 16,201.37</u>
Grand Total	\$ 49,557.29

M. Florio - Attorney

<u>Week 1981</u>	<u>Total Hours</u>	<u>Work</u>	<u>Allocations^a</u>		
			<u>C.O.S.</u>	<u>Ads</u>	<u>Info</u>
1/5-9	6	PHC, prep	3	--	--
1/12-16	20	prep	29½ ^b	4 ^b	--
1/19-23	45½	prep, DR's			
1/26-30	5	prep, meetings			
--	7½	PURPA filing			
2/16-20	1	prep			
2/23-27	8½	prep, DR's	5	2½	--
3/2-6	16½	staff repts, prep	1	½	--
--	5½	Exceptions, motion	4	1½	--
3/9-13	5½	PHC, prep	5½	--	--
3/16-20	41	heargs, prep	9	--	--
3/23-27	42	heargs, prep	--	6	--
4/6-10	8	DR's, prep	8	--	--
4/13-17	2	DR's, prep	2	--	--
4/20-24	20	heargs, prep	7	--	--
5/3-8	24½	Wells + prep	23½	1	--
5/11-15	24	Spertus + prep	½	13	--
5/18-22	32	heargs, prep	3	8	--
5/26-29	29	heargs, prep	16½	--	--
5/31-6/6	12½	prep	10	--	--
6/8-13	27	heargs, prep	24	--	--
6/14-19	41	heargs, prep	31½	--	--
6/22-26	27½	heargs, prep	16	--	--
6/29-7/4	23½	heargs, prep	10	--	--
7/6-10	29	heargs, prep	15½	1	--
7/12-18	19	heargs, prep	--	8½	--

M. Florio -Attorney

<u>Week</u> <u>1981</u>	<u>Total</u> <u>Hours</u>	<u>Work</u>	<u>Allocations^a</u>		
			<u>C.O.S.</u>	<u>Ads</u>	<u>Info</u>
7/19-24	15	heargs, prep	--	--	--
7/27-31	11½	briefing	9 ^c	--	--
8/2-7	26	briefing	26	--	--
8/10-14	3	briefing	--	--	--
8/16-21	3½	briefing	1½	--	--
8/23-28	43½	briefing	2½ ^c	2	--
9/8-11	12½	reply	9 ^d	1	--
9/21-25	1	read replies		--	--
9/30-10/23	5	misc.	--	--	--
11/9-14	14	orals and prep	9½ ^e	2½ ^e	2 ^e
11/17	3½	case wrap-up	1 ^b	½ ^b	--
11/23	2	Tr. corr.			
• •	1½	letter	--	--	--
	<u>665</u>	<u>TOTALS</u>	<u>283</u>	<u>52</u>	<u>2</u>

NOTES

- a All allocations are direct unless indicated
- b 83 hours of initial preparation and 3½ hours wrap-up time allocated by two-factor method described in text.
- c 7 hours direct; 10½ hours allocated by pages of brief written
- d 12½ hours allocated by pages of reply written.
- e Judgmental allocation based on relative time devoted.

R. Spertus - Attorney/Witness

<u>Dates-1981</u>	<u>Hours</u>	<u>Work</u>
1/26	1	prep DR's
3/2	8	review and prep DR's
3/13	8	review DR's
3/27	8	research
4/3	8	research
4/5	3½	research
4/24	8	testimony
5/1	8	testimony
5/7	1	meeting
5/8	8	testimony
5/12-15	15½	testimony
5/17-18	15	testimony
7/12-14	11½	prep and testify
8/10-15	15½	brief
8/23-27	24	brief
9/9-14	13	reply
	<hr/>	<hr/>
	156	TOTAL

(END OF APPENDIX A)

APPENDIX B
Page 1

Findings of Fact Contained in D.93887

58. Because the cost of envelopes and postage is included in the development of revenue requirement, the "extra" space (now occupied by the Progress) in the envelopes used for billing and dividend checks is properly considered as ratepayer property. The "extra" space is the space remaining, after inclusion of the monthly bill, dividend check and/or legal notices, for inclusion of other materials up to such total envelope weight as will not result in additional postage cost.

58a. There is a cost to ratepayers as a result of PG&E's using the "extra" space in billing envelopes for mailing the PG&E Progress ; there is no cost to ratepayers from PG&E's using the "extra" space for mailing the Progress to shareholders with dividend checks.

59. PG&E improperly recovers the cost of mailing its political advertising to ratepayers through its use of the extra space in billing envelopes because this practice allocates to PG&E, and deprives the ratepayers of, the economic value of the "extra" space in the billing envelope.

* * *

64. For ratesetting purposes, consumers should be signaled the present cost of consumption.

65. Short-run energy and short-run capacity costs are the correct way of conceptualizing marginal costs for ratesetting.

APPENDIX B
Page 2

Findings of Fact Contained in D.93887

66. Short-run marginal costs equals operating costs plus shortage costs.

* * *

75. Energy charges are much more responsive to usage than demand or customer charges.

76. Energy charges provide better conservation signals than demand or customer charges.

77. The residential gas and electric monthly customer charges should be eliminated.

78. Elimination of the electric residential customer charge results in an inequitable benefit to zero usage residences.

79. A minimum bill of \$2.00 per month per electric residential customer will mitigate the inequitable benefits received by zero usage residences.

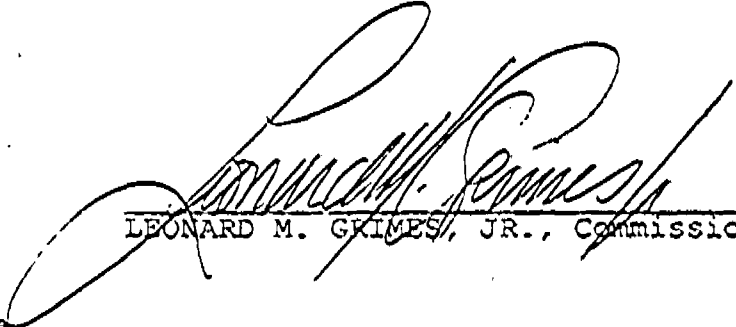
(END OF APPENDIX B)

A.60153
D.82-08-085

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

I concur in this decision and in doing so want to reiterate my strong feelings on the importance of intervenor funding. Active participation by the public in our proceedings is essential both to improve the consideration of issues and to strengthen the credibility of our processes. We simply cannot expect our over-worked staff to address all of the issues that may be of some importance to all ratepayers. Intervenors play an invaluable role in our hearings. Funding of serious and useful intervention is one of the better ways to assure this role will be filled.

My concern about our current policy on intervenor funding is that we are much too narrow. Today's decision fits neatly into the categories established by PURPA. But many of our decisions which have a substantial impact on ratepayers do not fit the PURPA mold. I hope that our pending rulemaking in OII-100 can be expedited to broaden the availability of intervenor funding to all proceedings in which an intervenor has made a substantial contribution to our decision making process.



LEONARD M. GRIMES, JR., Commissioner

San Francisco, California
August 18, 1982

Pacific Gas and Electric Company (PG&E) argues that since rehearing has been granted on D.93887, this petition for fees is premature and that no decision on compensation should be issued until a final order is issued.

We disagree. Rule 76.06 provides that following any decision or order in a proceeding parties may file for compensation. We could give more credence to PG&E's argument if the effective date of D.93887 had been stayed by D.82-02-075. D.93887 was not stayed, however, and PG&E has been operating under D.93887 since January 1982. There is no reason to postpone our consideration of TURN's petition. Rates are being assessed as set by D.93887, therefore, it is reasonable to consider TURN's petition at this time. It is possible that D.93887 could be modified by our eventual decision on rehearing; however, we cannot ignore that D.93887 has been in effect for most of 1982. SS

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