

ORIGINAL

Decision 93371- August 4, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Power & Light Company under Section 454 of the Public Utilities Code of the State of California for authority to increase rates for electric service.

Application 58605
(Petition filed
December 15, 1980)

(For appearances see Decisions 91326 and 92411)

FINAL OPINION

Background

On December 15, 1980 Toward Utility Rate Normalization (TURN) filed a petition for award of compensation and fees for its participation in this proceeding. The request is made under the Public Utility Regulatory Policies Act (PURPA) and administrative rules established by the Commission in compliance with PURPA in Decision (D.) 91909 (OII 39) dated June 17, 1980, as modified by D.92602 dated January 6, 1981. TURN first asked for PURPA funds in this matter on June 25, 1979. ✓

The Commission has issued two interim decisions in this application; D.91326 dated February 13, 1980 and D.92411 dated November 18, 1980. At the time of the first decision we had not established our administrative procedures for handling awards of compensation under PURPA. When we issued the second decision, petition for rehearing of D.91909, which was to establish the administrative procedures, was pending. Therefore, we deferred a decision on TURN's original (June 25, 1979) petition. In the meantime, TURN filed the more complete petition (December 15, 1980) now before us.

The Administrative Law Judge (ALJ) assigned to this proceeding ruled that by March 6, 1981 parties wishing to could comment on TURN's petition. Pacific Power & Light Company (Pacific), the applicant in this proceeding, was the only party who responded. TURN filed a reply on March 24, 1981 and Pacific filed a short rejoinder on April 6, 1981. The matter is now ready for decision.

As delineated in D.91909 PURPA establishes certain federal standards which must be considered in public hearings. These are:

1. Cost of service.
2. Declining block rates.
3. Time-of-day rates.
4. Seasonal rates.
5. Interruptible rates.
6. Load management techniques.

In addition to the ratemaking standards PURPA establishes standards governing certain regulatory practices. These are:

1. Master metering.
2. Automatic adjustment clauses.
3. Information to consumer.
4. Procedure for termination of electric service.
5. Advertising.

We concluded in D.91909 that:

1. A consumer's participation must relate to one of the 11 standards noted above.
2. In order to qualify for compensation a consumer must advocate a position on a PURPA standard and that position must be adopted in whole or in part by the Commission.
3. Consumers advocating the same or similar positions should be represented by a common legal representative.

4. A consumer should not be compensated for presenting the same evidence and advocating the same position as the Commission staff.
5. A consumer should be required to demonstrate that but for the ability to receive an award of compensation its intervention or participation may be a significant financial hardship.
6. A consumer showing a financial hardship should include certain financial information as shown in the appendixes of D.91909.

In D.92602 dated January 6, 1981, we modified D.91909 to provide an exception for cases which were pending on the effective date of the rules when the formal filing procedures that we set up in D.91909 could not be met. The modification provided that we would suspend the time requirements for filing requests for reimbursement and would consider such requests on an individual basis. The request of TURN in this case is that type of exception.

Position of the Parties

TURN relies on the following Commission-adopted TURN proposals in D.92411 to support what it believes to be a "substantial contribution" to implementation of PURPA.

1. A proposed growth share allocation method (which the Commission desires to implement in the future).
2. Three suggestions for adjusting the present method of allocation. One of these was supported by the staff.
3. Recommendation of a steeply inverted rate design which minimized the lifeline increase thereby encouraging conservation.
4. A proposed extension of the Del Norte County lifeline heating season from six to eight months thereby promoting conservation.
5. A proposal to include a "report card" in monthly billings made under the equal monthly payment plan to mitigate any anticonservation effects of the plan.

6. A suggestion that an installment plan be instituted to pay reconnection charges.

Concerning the requirement of "significant financial hardship" TURN claims it does not have a regular dues-paying membership, but relies on grants, contributions, expert witness fees, and various fund-raising projects. TURN is a tax-exempt nonprofit corporation organized in 1973 under California laws. Its books are maintained on a cash basis with separate accounts for nonadvocacy special projects. Income for the July 1, 1979 through June 30, 1980 fiscal year, exclusive of such special projects, was approximately \$81,000 while expenses totaled about \$74,000. Of this total income, \$27,000 was received on a one-time nonrenewable basis for advocacy in specific Commission rate proceedings. TURN's unrestricted income, therefore, approximated \$54,000; this is representative of the organization's operations for the past several years.

TURN claims the only funds made available expressly for this application came from Del Norte and Siskiyou Counties with each contributing \$6,000. TURN maintains this \$12,000 was "up front" funding to cover out-of-pocket costs when it appeared that the Commission's lack of response to TURN's June 25, 1979 petition for funds would bar TURN's participation in the case. If the Commission awards TURN the funds requested, TURN plans to reimburse the counties for the \$12,000 advanced. The following is a summary of TURN's requested funds:

TURN attorneys	\$46,387
Research assistance	1,400
Expert witnesses	20,471
Travel and miscellaneous	<u>3,587</u>
Total	\$71,845

Appendix A contains the details of the \$71,845.

Rule 6.03(e) of the Commission's Rules of Practice and Procedure (Rules) requires:

"For a consumer who claims to represent the interest of other consumers, a showing which includes the articles of incorporation, bylaws, membership structure, composition of Board of Directors, and newsletter circulation, if any, along with a summary description of the previous work of the consumer."

TURN claims it represents the interests of residential utility consumers generally, as well as specific consumer organizations and constituencies which are represented on its board of directors. These organizations include the Consumer Federation of California, The California Legislative Council for Older Americans, The Grey Panthers, San Francisco Consumer Action, and the Consumers' Cooperative of Berkeley, Inc. As previously pointed out, TURN also represents in this proceeding, the citizens of the Counties of Del Norte and Siskiyou. TURN's articles of incorporation, bylaws, and a Board of Directors Roster were attached to its pleading filed December 15, 1980. TURN does not currently have individual memberships or a regularly published newsletter.

Rule 76.03(c) requires:

"A showing addressing representation of persons with the same or similar interests by a common legal representative."

TURN claims that it has clearly distinguished its participation in this proceeding from that of the Commission staff in its cite of the six points discussed previously. TURN states there were only two parties in this case who might be considered to represent similar interests. These were Assemblyman Douglas Bosco's office and Norman Edwards. TURN represents that Assemblyman Bosco's representative actively cooperated with TURN in the conduct of the

proceeding and did not duplicate efforts and thereby burden the record. TURN claims it is informed and believes that Assemblyman Bosco's office will not separately seek an award of costs in this proceeding. Edwards actively participated in the proceedings and advocated the "State facilities method" of cost allocation among other things. TURN claims it has received no indication that Edwards intends to seek a reimbursement of his costs; therefore, TURN concludes that an award of costs to TURN will not cause ratepayers to pay twice for the same representation.

On March 6, 1981 Pacific filed its response to TURN's supplemental December 15, 1980 petition. Pacific contends that TURN should not receive any compensation for three reasons; first, TURN delayed the proceeding and greatly increased the expense for all concerned; second, TURN cannot meet the standard of demonstrating financial hardship; and third, TURN's activities were detrimental to Pacific's ratepayers.

Before addressing the three points stated above, Pacific claims that the applicable legislation does not authorize any payment. It claims that PURPA provided for the potential reimbursement of intervenors in utility rate cases, but did not specifically authorize state commissions to compensate intervenors for expert witness fees or attorney fees. Also, the legislation did not include specific procedures for determining eligibility for compensation. Pacific states that if the Commission concludes it is required by PURPA to create rules imposing attorney fees on utilities, the legislation violates the United States Constitution, Articles IV and X. It cites Mississippi v Federal Energy Regulatory Commission et al., U.S. District Court, Southern District of Mississippi (Jackson Division) Civil Action No. J 79-0212(C). Pacific further points out that the Commission, in D.92236, dated September 16, 1980, denied

TURN's petition for attorney fees and other costs, finding that the rules established by D.91909 should not be applied retroactively. However, we note that D.92486 issued December 2, 1980 stayed D.92236, pending a final decision on the proposed rules. By D.92602 dated January 6, 1981, the Commission modified D.91909. The modification provided that the compensation rule would not be applicable to decisions issued prior to the effective date of the rules. The decision further provided that for cases pending on the effective date of the rules, where the formal filing procedures could not be met, the Commission would consider compensation requests on an individual basis. This is one of those cases.

Concerning Pacific's other allegations, Pacific first contends TURN should not receive compensation due to its improper tactics in delaying this case; Pacific claims this case should have been resolved by January 1980, long before the July 1980 effective date of D.91909. It claims the chronology of TURN's participation demonstrates that TURN, in order to delay the case and obtain potential compensation, improperly obstructed the reasonable and orderly conduct of the case. Pacific claims TURN should have been aware of the case as early as January 1979, when it was first filed; but TURN took no action until June 26, 1979 when TURN appeared at a hearing in this matter but did not enter a formal appearance. Two weeks later, on July 10, 1979, six months after the case was filed, TURN made an appearance in the case, asking for a delay until September 1979. Pacific claims TURN's actions in the summer and fall of 1979 indicated that TURN clearly contemplated that the case would be decided no later than December 1979. By D.91326 dated February 13, 1980 an interim increase was granted and the Commission determined that all but two of the issues presented could be decided on the current record. Further hearings were held in Crescent City and Yreka in May 1980 and following those hearings the Commission

issued D.92411, on November 18, 1980. Pacific claims that had TURN and its financial supporters, Del Norte and Siskiyou Counties, timely intervened, the case under any conceivable circumstances would have been concluded prior to the July 1980 effective date of the Commission's compensation rules, thereby making TURN ineligible for compensation in this case.

Second, Pacific claims TURN has not met the financial hardship test, and was careless, if not negligent, in identifying its financial backers. TURN's original appearance was entered as "TURN, representing Del Norte County." By letter dated July 24, 1979, TURN stated it was representing the residential customers and the citizens of Del Norte County and asked that reference to its representing Del Norte County should be revoked. Pacific states that Del Norte, and subsequently Siskiyou, County intervened in this case through TURN and the record contains no evidence that the two counties were unable to afford their own representation. Pacific reasons that TURN entered the case because it was requested to do so by Del Norte and Siskiyou Counties, and that the counties have not demonstrated that they are incapable of paying the costs of participation; neither they nor TURN has demonstrated financial need or hardship, as required by the Commission's rules.

Third, TURN's participation, according to Pacific, was detrimental to the interests of Pacific's ratepayers. Pacific points out that in order to avoid unnecessary delay and expense Pacific was ready and willing, and supported by the staff and California Farm Bureau, to agree to a stipulation that would have provided a 25.27 overall increase effective August 1, 1979. In addition, Pacific would have agreed not to seek a further general rate increase effective prior to January 1, 1981. Because of TURN's opposition, the ALJ ruled the proposed stipulation was null and void. Pacific claims that because the Commission approved an interim increase exactly equal to

the amount proposed in the stipulation that the Commission implicitly acknowledged that the proposed settlement was reasonable and that it would not result in excessive or unsupported California rates. Pacific points out that in D.92411, the second interim decision, the Commission allowed Pacific an additional increase which, together with the first interim increase, totaled 31.9% over the level of revenue that would have been charged California ratepayers, had the stipulation been accepted. Therefore, Pacific claims TURN's unreasonable and unsupported rejection of the settlement will cost California ratepayers \$1,366,000 per year. We note, however, that (1) the 25.2% increase would have gone into effect August 1, 1979, whereas the interim increase went into effect February 13, 1980, and (2) the final increase went into effect November 18, 1980.

On March 24, 1981 TURN replied to Pacific's contentions. TURN submits that the Commission, in its evaluation of the compensation issue, should look to the quality of its substantive work and the results achieved rather than the stale accusations of delay raised in Pacific's response. On the matter of jurisdiction, TURN points out that no party to OII 39 has sought a writ of review of D.91909 from the California Supreme Court although all electric utilities operating in California were named as respondents to OII 39. Pacific did not enter an appearance or participate in that proceeding in any manner. TURN dismisses the Mississippi case as having any persuasive authority outside the jurisdiction of that court. TURN claims that all the delays after it entered the proceeding were either approved by the assigned commissioner, the ALJ, or the Commission itself. TURN dismisses the contention of Pacific that in July 1979 TURN foresaw all the events that would unfold regarding the Commission's PURPA compensation rules, including D.92602 issued 18 months later, and attempted to delay this case accordingly.

With respect to the question of TURN's financial hardship, TURN claims that Pacific again focuses its attack on trivialities and ignores real issues. TURN claims that, immediately upon discovering it had been mistakenly listed in its appearance as representing Del Norte County, its executive director informed the Commission by letter that it was representing the residents of Del Norte County, not the corporate entity. TURN claims the Commission well knows that its appearances before the Commission are always on its own behalf as a representative of residential customers; although it may receive funds from cities and counties at various times, it has never appeared as a representative of the corporate interests of a governmental entity, but only represents citizens of the area involved. TURN maintains that Pacific's suggestion that TURN was acting as a mere agent of the counties in this case is not true. TURN claims that it is an established consumer organization and had no dealings with Del Norte or Siskiyou Counties until 1979. In this case it did not act under the direction and control of Del Norte and/or Siskiyou Counties in any way.

In response to Pacific's contention that TURN did not make a substantial contribution on the issues of this case, TURN points out that Pacific addresses only one of these, the growth share allocation method. Even though the Commission did not adopt the method in this case, members of the Commission have already initiated discussions with other jurisdictions which may ultimately be impacted by TURN's showing. In closing its response, TURN states that it seeks compensation in this case based on its contributions to the implementation of PURPA, and that PURPA does not require that a consumer's contribution affect overall revenue requirements, but rather, should contribute to the implementation of a PURPA standard. TURN suggests that Pacific's discussion might be germane if TURN were seeking

compensation under the common law "substantial benefit" doctrine, but since PURPA is the issue, Pacific's discussion is irrelevant.

The final filing in this proceeding was made on April 6, 1981 by Pacific in response to TURN's reply to Pacific's response. In that reply Pacific points out that it is not aware of any residential customer who requested TURN's participation in this proceeding. Pacific believes the facts are clear that Del Norte and Siskiyou Counties determined that their residents should receive representation and that they chose to hire an advocate, TURN. Pacific claims that because the counties have not claimed or demonstrated financial hardship the petition must be denied.

Discussion

Upon consideration of the facts presented by TURN, the replies of Pacific, the record in this case, and D.91326 and D.92411, it is clear that TURN has met all necessary requirements for an award of compensation under PURPA. TURN has demonstrated that it meets all six of the PURPA standards criteria we laid down in D.91909. Adjustments to the present method of allocation adopted by the Commission and the growth share method, which the Commission may adopt in the future, satisfy the cost of service criterion; the rate design adopted satisfies the criteria for declining block rates, time-of-day rates, and interruptible rates; extension of the lifeline heating season in Del Norte County satisfies the criteria of seasonal rates and load management techniques; the equal monthly pay report card proposal satisfies the load management techniques criterion; and the installment payment price for reconnection charges satisfies the cost of service criterion. In summary, TURN's

major contributions covered cost of service, declining block rates, and seasonal rates as established by PURPA ratemaking standards, and information to consumers and procedures for termination of electric service as established by PURPA regulatory practices standards.

We must reject Pacific's contention that TURN foresaw what we would do in establishing procedures required by PURPA and therefore delayed the proceeding. It occurs to us that if Del Norte and Siskiyou Counties hired TURN they would now pay the rest of the bill and there would be nothing before us. On the point that the public is paying higher rates because of TURN's participation, the correct consideration would be the total dollars paid over some applicable period of time; we have not calculated that nor do we believe it is important to do so.

It remains for us to determine if the amount of compensation TURN requests is reasonable. We think it is not.

First, there is nothing in the record or the pleading to indicate that the counties expected reimbursement of their so-called "up front" \$12,000. Therefore, we will reduce the request by that amount.

Second, the per-hour amount (\$75) requested for attorney fees is excessive in this case. The ALJ requested TURN and Pacific to furnish actual fees paid per hour to attorneys working on this matter. TURN's response indicated a figure far less than \$75 and Pacific's was slightly in excess of \$75. We note that salaries for the staff counsel who worked on this matter ranged from \$17.65 to \$20.39 per hour,^{1/} not including any fringes or overheads for such things as supervision, office space, clerical support, etc.

Rule 76.02(b) states "compensation means reasonable attorney fees, expert witness fees, and other reasonable costs."

Rule 76.02(i) states "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."

We note that Rule 76.02(i) gives us reasonable leeway in determining fees for compensation under PURPA and sets only a cap on those fees. We believe that for this case it is appropriate to compare the particular staff salaries, which on a "fully loaded" (fringes included) basis would approximate \$30 per hour on the average, with Pacific's figure of \$75 per hour. We conclude that \$50 per hour

^{1/} The two staff counsel assigned to this case during the fiscal year 1979-80 were classified as Public Utility Counsel II and III. The top yearly salary for these positions during 1978-79 was \$36,780 for Counsel II and \$42,420 for Counsel III. Dividing by 2,080, the nominal work hours per year, produces \$17.68 and \$20.39 per hour respectively for the Counsel II and III.

represents a reasonable figure for estimating the "prevailing market rates for persons of comparable training and experience." (We note for example, that in D.92914 we approved \$50 per hour as a reasonable fee arrangement between complainant, David Wilner, and his attorneys.) It is, of course, impossible to compute a "prevailing market rate" on an exact dollar-and-cents basis, and TURN has supplied no California data to enable us to do so. In these circumstances, we cannot ignore the bottom end of the range, namely, staff salaries, and focus exclusively, as TURN wishes, on a \$75 figure. That would represent an abuse of both our discretion and the ratepayers' trust. Applying, therefore, the \$50-per-hour figure to the 618.5 hours shown in Appendix A, produces a total for attorney fees of \$30,925 in lieu of the \$46,387 shown in Appendix A, a difference of \$15,462. The award of compensation we will make therefore will be TURN's original request of \$71,845 reduced by the \$15,462 and the \$12,000 already paid by the counties, for a total award of \$44,383.

Findings of Fact

1. By this petition TURN requests an award of \$71,845 under Section 122 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. Paragraph 2632, and Article 18.5 of this Commission's Rules.
2. TURN is eligible for reimbursement under our procedures even though the decision in this case was issued prior to the effective date of Article 18.5 of the Commission's Rules.
3. TURN has complied with Rule 76.11 of our rules.
4. TURN has made a substantial contribution to the implementation of PURPA in this proceeding, which is supported by the findings in D.92411. That contribution covered standards for:
 - a. Cost of service.
 - b. Declining block rates.
 - c. Seasonal rates.
 - d. Information to consumers.
 - e. Procedures for termination of electric service.

5. TURN has shown that without the award requested its participation in this proceeding would cause it significant financial hardship.

6. TURN has shown that it represents the interests of other consumer appearances.

7. An award of compensation to TURN will not result in rate-payers paying twice for the same representation in this proceeding.

8. The compensation requested by TURN of \$71,845 is unreasonable.

9. An award of compensation to TURN in the amount of \$44,383 is reasonable.

Conclusions of Law

1. TURN has demonstrated its compliance with all of the substantive requirements of Article 18.5 of the Commission's Rules and should be awarded compensation in the amount noted in the following order.

2. Mississippi v Federal Energy Regulatory Commission, et al., does not apply to this proceeding.

FINAL ORDER

IT IS ORDERED that:

1. Within 30 days from the effective date of this order Pacific Power & Light Company (Pacific) shall pay to Toward Utility Rate Normalization \$44,383.

2. In its first general rate case following this decision, Pacific shall include in its California intrastate revenue requirement an amount sufficient to reimburse it for the \$44,383 award.

This order becomes effective 30 days from today.

Dated AUG 4 1981, at San Francisco, California.

John E. Snyo
President
Richard N. ...
Thomas ...
Robert ...
Presulla C. ...
Commissioners

APPENDIX A

Itemized Costs as requested by TURN

M. Florio Attorney at Law	598-1/2 hours @ \$75	\$44,887
A. Murphy Attorney at Law	20 hours @ \$75	1,500
R. Imes Research Assistant	400 hours @ \$ 3.50	1,400
F. Wells Expert Witness	236.9 hours @ \$70	16,583
J. McCabe Expert Witness	72 hours @ \$54	3,888
Travel and Other Expenses		<u>3,587</u>
	Total	\$71,845