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Decision 95-08-021 August 11, 1995

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 January 1, 1994, and to Adjust its Gas Rates Effective January 1, 1994.

Application 93-04-028 (Filed April 15, 1993)

ORIGINAL

(U 39 M)

ORDER GRANTING INTERVENOR COMPENSATION

Toward Utility Rate Normalization, (TURN) requests \$13,379.07 in intervenor compensation for its contribution to the

Commission's decision in the forecast phase of Pacific Gas and Electric Company's (PG&E) 1994 Energy Cost Adjustment Clause (ECAC), Decision (D.) 93-12-044. This decision finds TURN made a substantial contribution to the proceeding and awards compensation in the amount requested.

TURN's Request

Compensation is available under Section 1801 et seq. of the California Public Utilities (PU) Code for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs for intervenor customer groups who make a substantial contribution to a Commission proceeding and who could not otherwise afford to participate in the proceeding without significant financial hardship. TURN addressed the issue of significant financial hardship and was found eligible to seek compensation in this proceeding by Administrative Law Judge (ALJ) Ruling dated [illegible] based on a comparison of the total hours to compensation-related

1 Specific sections of PU Code will be cited hereafter as "Section".

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August 17, 1993. Its request for compensation was timely filed on February 18, 1994, within 60 days of a final Commission decision in the proceeding.<sup>2</sup>

TURN's request provides a description of its contribution to this proceeding and a detailed account of its services and expenditures. Its filing documents its contribution in monitoring the development of the two settlements submitted for Commission approval and in advocating the position adopted by the Commission on two litigated issues: reinstatement of the Annual Energy Rate (AER) and the type of allowable expenses in the Demand Side Management (DSM) balancing accounts. TURN states its participation constitutes a substantial contribution, as defined in section 1802(h).

The compensation requested is for the services of three attorneys, Robert Finkelstein, Peter Allen, and Michel Florio, and an energy analyst, Dr. Eugene Coyle. The filing provides a showing that the hours, hourly rates, and costs for each individual are reasonable and properly documented.

Protest to Filing

PG&E timely filed a protest to TURN's compensation filing on March 21, 1994. It objects to \$1,911 of TURN's request based on: (1) the hourly rate requested for Finkelstein and Allen; and (2) the amount of attorney time spent preparing this filing. PG&E does not object to the rate requested for Florio or Coyle and it does not dispute the significance of TURN's contribution to the Commission's decision.

PG&E considers the 8.5 hours TURN spent preparing its compensation filing excessive and recommends the Commission reduce the hourly rate for this task by one-half. This recommendation is based on a comparison of the total hours to compensation-related

<sup>1</sup> Specific sections of PU Code will be cited hereafter as "Section".

<sup>2</sup> D.93-12-044, mailed December 20, 1993.



PG&E contends the Commission has followed a consistent practice of reducing TURN's hourly rate with respect to the time spent preparing compensation-related pleadings and, therefore, should reduce the attorney hourly fees by one-half for the 8.5 hours spent preparing this compensation request. PG&E cites two cases in support of its contention, D.93-04-048 and D.93-06-022. The two compensation cases cited by PG&E in support of its adjustment are the exception, not the normal procedure, on this issue. At the time of PG&E's protest, the Commission had issued several more recent compensation decisions that did not adjust hours spent preparing compensation requests downward (e.g., D.93-06-027, D.93-06-073, D.93-10-074, and D.94-03-027); this practice has continued to date (e.g., D.94-05-052, D.94-06-015, D.94-09-003, and D.94-10-029). Additionally, it seems reasonable that some portion of time is needed to prepare any compensation request, regardless of the total hours spent on the case. PG&E's logic, carried to its conclusion, would have unlimited preparation time to unrealistic portions of an hour, so long as the percentage of total case time was proportionate. Therefore, we find TURN's request for the full 8.5 hours of time spent preparing its filing reasonable. We should grant TURN's request for \$13,379.07 in compensation, with applicable interest, computed as follows:

The hourly rates requested for attorneys Allen and Minkels are the same as the hourly rates found reasonable by the Commission for other work done by each attorney in the same time period, calendar year 1993. (See D.93-12-025, D.94-03-027, D.94-10-029, D.94-10-030 for Pinkelstein and D.94-04-017, D.94-04-025, and D.94-07-031 for Allen.) PG&E has presented no compelling grounds for the Commission to deviate from these rates. Therefore, we should find a 21% hourly rate for Allen and Minkels. TURN could also consider supplementing its request when significant time is spent responding to protests.

4 TURN's request of \$13,136.57 is adjusted to correct a computational error.



Therefore, on the issue of hourly rates, we find that PG&E's protest was made in good faith as it was reasonably based upon the precedent that existed at the time of the protest. Further, PG&E made a good faith argument that the complexity of the issues and rate escalations of its attorney's wages supported the lower rate.

On the issue raised in PG&E's protest concerning the hours spent preparing the request, we also find that the protest made a good faith argument, supported by two prior decisions, that the hours claimed were disproportionate to the total hours spent in the case. We disagree that PG&E's arguments were frivolous, as that standard is applied in most courts of law.

We are, however, concerned with PG&E's omission of references to cases adverse to its position. The obligation not to mislead the Commission, found in Rule 1 of our Rules of Practice and Procedure, includes an obligation of counsel to cite to and distinguish relevant and adverse cases, or argue that we should change the result from such a case for some good cause. Because we appreciate the case specific and fact intensive nature of intervenor compensation requests, and our legitimate role in exercising the judgment that sometimes leads to dissimilar results, we decline to sanction PG&E for this omission. Instead, we take this opportunity to advise all utilities (or other respondents in compensation cases) that frivolous positions will not be tolerated, relevant cases adverse to one's position may not be blithely ignored, and repeated, lost efforts to argue for a change in result from a prior, adverse case can give rise to sanctions. It is not our desire to chill the filing of protests, but we have an obligation to the public and the process to ensure the quality of such filings.

Findings of Fact

TURN was found eligible to seek compensation in this proceeding by ALJ Ruling dated August 17, 1993.

2. TURN requests \$13,379.07 in compensation for its substantial contribution to D.93-12-044, the final order in PG&E's 1994 ECAC application.

3. TURN made a substantial contribution to D.94-12-044 as set forth herein.

4. The hours, hourly rates, and costs sought by TURN in its compensation request are reasonable.

Conclusions of Law

- 1. TURN's request for compensation should be granted.
- 2. The Commission may audit TURN's records and books to the extent necessary to verify the basis of this award.

IT IS ORDERED that:

- 1. Toward Utility Rate Normalization (TURN) is awarded \$13,379.07, plus interest, in compensation for its contributions to Decision 93-12-044.
- 2. Pacific Gas and Electric Company (PG&E) shall, within 30 days of the effective date of this decision, pay TURN \$13,379.07, plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release G.13,

I CERTIFY THAT THIS DECISION  
 WAS APPROVED BY THE ABOVE  
 COMMISSIONERS TODAY  
 [Signature]  
 Acting Executive Director

with interest beginning May 4) 1994 and continuing until the full  
payment is made. The final contribution to D.93-12-044, the final

This order is effective today.

Dated August 11/1995, at San Francisco, California.

The hours, hourly rates, and costs sought by TURN in its

compensation request are reasonable.

DANIEL W. PESSLER  
President

for compensation should be granted.

P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE

TURN's records and books to the

extent necessary to verify the basis of this award.

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is awarded  
\$13,395.07, plus interest, in compensation for its contributions to

Decision 93-12-044.

2. Pacific Gas and Electric Company (PG&E) shall, within 30

days of the effective date of this decision, pay TURN \$13,395.07,

plus interest at the rate earned on prime, three-month commercial

paper, as reported in the Federal Reserve Statistical Release G.15.

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

*Wesley Franklin*

Acting Executive Director