

SEP 8 1995

Decision 95-09-034 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion for purposes of compiling the Commission's rules of procedure in accordance with Public Utilities Code Section 322, and considering changes in the Commission's Rules of Practice and Procedure.

R.84-12-028 April 19, 1984 (Filed December 19, 1984)

ORIGINAL

OPINION

1. Summary

This decision grants Toward Utility Rate Normalization (TURN) an award of \$9,215.30 in compensation for its contribution to Decision (D.) 95-05-019.

2. Background

This docket, Rulemaking (R.) 84-12-028, is a continuing proceeding to review and revise the Commission's Rules of Practice and Procedure (Rules). TURN's request concerns a series of rulings and decisions that resulted in substantial revisions to some of our basic procedural rules.

On February 19, 1993, a ruling of the Administrative Law Judge (ALJ) requested general suggestions on how best to go about revising the Rules. TURN responded to this request on March 22, 1993. An ALJ's ruling of December 21, 1993, proposed some specific changes to the basic procedural rules and requested comments. TURN joined with Utility Consumers Action Network (UCAN) to provide its comments on January 20, 1994. The Commission formally proposed

It appears that TURN's attorneys prepared this joint filing. We have not received a request for compensation from UCAN in connection with this proceeding, and we presume that UCAN will not seek compensation in connection with this joint filing.

All citations to sections are to the PU Code.

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revising these rules in D.95-01-015 on January 5, 1995, and TURN responded with its comments on March 13. The Commission modified its proposal in D.95-04-027 and adopted the proposed rules, as modified, in D.95-05-019. TURN's request relates to all of these rulings, decisions, and comments.

On June 30, 1993, TURN filed a Notice of Intent to Claim Compensation in which it asked for a finding of eligibility to claim compensation in this proceeding. As authorized under Public Utilities (PU) Code § 1804(b),² the assigned ALJ granted the request by ruling dated July 9, 1993.

3. Request for Award

TURN filed its request on July 10, 1995, seeking an award of \$10,777.71 for its contribution to D.95-05-019. This amount consists of \$9,992.50 in attorneys' and representative's fees and \$785.30 in other costs. GTE California Incorporated (GTEC) responded to the request on August 9 and addressed the issue of the allocation of any award granted to TURN. TURN replied to GTEC's response on August 23.

3.1 Timeliness of the Request

Section 1804(c) provides that a customer who has been found eligible may file a request for an award of compensation within 60 days of "a final order or decision" in the proceeding. Although D.95-05-019 does not close this proceeding, Rule 76.72 defines "final order or decision" to include "an order or decision that resolves an issue on which the customer believes it made a substantial contribution." The issues for which TURN seeks compensation were resolved by D.95-05-019, dated May 10, 1995. Under the procedure for computing time set forth in Rule 8.13, TURN's request of July 10 was timely.

3.2 Substantial Contribution

TURN notes the difficulty in a proceeding of this nature of identifying a single party, as being responsible for the final version of any particular rule. However, §1802(h) addresses this

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problem and provides that "(w)here the customer's participation has resulted in a substantial contribution (to a commission decision), even if the decision adopts that customer's contention or the said recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees and other reasonable costs incurred by the customer in (i) preparing or presenting that contention or recommendation, (ii) ...

TURN cites several examples of changes incorporated in the adopted Rules that reflect positions advocated by TURN. Rules 44.1 and 47(f), for example, maintain a 30-day period for protests to applications or responses to applications or petitions for modification (as TURN urged); in earlier forms these rules would have shortened this period. Rule 44 in its adopted form permits responses (as well as protests) to applications; as proposed, the option of filing a response to an application would have been available only to the Division of Ratepayer Advocates. Rules 3(b), 8(a)(1), and 8.11(f) also contain clarifications TURN requested in its comments of January 20, 1994. Although the comments of other parties may have made the same points as TURN's comments, § 1802.5 provides that "participation by a party that materially supplements, complements, or contributes to the presentation of another party may be fully eligible for compensation" if the party makes a substantial contribution to the Commission's decision or order.

We agree that TURN made a substantial contribution to D.95-05-019 and should be fully compensated for its contribution. TURN's comments were influential in helping us arrive at the final forms of the adopted rules.

3.3 Attorneys' Fees TURN requests compensation for its attorneys and its representative based on the following hourly rates: for P. V. Allen, \$175; for M. P. Florio, \$210 for 1993, \$235 for 1994, and \$250 for 1995; for T. J. Long, \$200 for 1993 and \$215 for 1994; for

At Krause, \$125. The Commission has previously authorized all of these rates for these advocates for these time periods, and we will base our award on these rates. If we have determined that TURN maintained detailed time records indicating the number of hours that were devoted to this case, those records should reveal that 4.75 hours of Florio's time was devoted to work on and other proposals in this proceeding that were not addressed in order D.95-05-019. TURN may seek compensation for this time, if appropriate, when those proposals are finally adopted by the Commission, but we will remove those hours from our award in this decision.

We will also make one other adjustment to the hours for which TURN requests compensation. The time entry for June 1, 1995, shows that Florio spent 1.5 hours on "Memo re: changes." From this description, it appears that either this time was spent on preparing a memorandum summarizing the rules changes (an activity that is not a reasonable cost of participation leading to (1) (b) D.95-05-019) or the summary was in preparation for filing TURN's request for compensation. Even before this additional 1.5 hours is considered, the time devoted to the request for compensation (12 hours) appears disproportionately high. We will not allow recovery for this 1.5 hours, but we will make no further adjustment to the hours requested in connection with the request for compensation.

In all other respects, the time TURN devoted to its participation appears reasonable and should be compensated in full.

3.4 Miscellaneous Costs

TURN has requested compensation for \$785.30 in postage and copying expenses in connection with its participation. These costs appear reasonable, and we will allow recovery of them.

representative based on the following rates: for P. V. Allen, \$175; for M. P. Florio, \$210 for 1993, \$232 for 1994, and \$250 for 1995; for P. J. Long, \$200 for 1993 and \$215 for 1994.

4. Award Granted

Based on TURN's request and the adjustments to allocate compensable hours noted above, we award TURN \$9,215.30, calculated as follows:

Attorneys' and Representative's Fees

P. V. Allen
 16.75 X \$185 = \$3,098.75
 M. Pflieger
 4.75 X \$210 = \$997.50
 4.25 X \$235 = \$998.75
 9.00 X \$250 = \$2,250.00
 T. Long
 2.50 X \$200 = \$500.00
 0.50 X \$125 = \$62.50
 Krause
 4.25 X \$125 = \$531.25
 Subtotal \$8,430.00

Other Reasonable Costs

Copying expenses \$ 623.90
 Postage costs \$ 161.40
 Subtotal \$785.30

Total Compensation \$9,215.30

TURN did not initially address the issue of how to allocate the responsibility for paying this award, but GTEC raised this issue in its response to TURN's request. As GTEC notes, since no single utility or identifiable small group of utilities is the subject of this proceeding, allocation of this award is not straightforward. The order instituting this rulemaking sought widespread notice of and participation in this proceeding, but it did not name all utilities as respondents. GTEC argues that any award made in this proceeding should be apportioned among all entities regulated by this Commission.

Although GTEC's suggested allocation has some logical appeal, it would be unjustifiably burdensome to attempt to allocate this relatively small award among the hundreds of entities this

Commission regulates, as TURN notes in its reply. TURN proposed to allocate the award among the four large energy utilities and the two large telecommunications utilities that are the focus of the bulk of TURN's efforts before the Commission. TURN recommends making this allocation on the basis of recorded annual jurisdictional revenues of these six utilities.

We will employ a simpler variation of TURN's proposal. As a matter of practicality and administrative ease, we will assess responsibility for paying the cost of TURN's compensation equally among the six large utilities TURN listed in its reply.

As in all intervenor compensation decisions, we put TURN on notice the Commission Advisory and Compliance Division may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. TURN has made a timely request for compensation for its participation in proceedings leading to D.95-05-019.
2. TURN contributed substantially to the rules revisions adopted in D.95-05-019.
3. TURN has requested compensation at hourly rates that the Commission has previously approved for TURN's attorneys and representative.
4. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN should be awarded \$9,215.30 plus interest for its substantial contribution to D.95-05-019.
2. This order should be effective today so that TURN may be compensated without unnecessary delay.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is awarded \$9,215.30 in compensation for its participation and substantial contribution to Decision 95-05-019.

2. GTE California Incorporated, Pacific Bell, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall each pay \$1,535.88 to TURN within 30 days of the effective date of this order. These companies shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, such interest to be computed from September 23, 1995, through and including the date full payment is made.

This order is effective today.

Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin
Acting Executive Director