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Decision 95-11-057 November 21, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SALZ LEATHERS, INC., A California Corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case 90-04-030
(Filed April 19, 1990)

(See Decision (D.) 91-08-009 and D.95-06-010 for appearances.)

OPINION ON REQUEST FOR COMPENSATION

1. Summary of Decision

Toward Utility Rate Normalization (TURN) is awarded \$4,547.70, plus interest, in compensation for substantial contributions to D.95-06-010. The decision assigned to shareholders the cost responsibility for a refund ordered in a complaint case brought by Salz Leathers, Inc. (Salz) against Pacific Gas and Electric Company (PG&E).

2. Background

This case began as a contract dispute between Salz and PG&E. Following an evidentiary hearing, the Commission issued D.91-08-009, which ordered PG&E to refund \$41,524.16, plus interest, to Salz. The decision also ordered that PG&E should not recover any of the refund amount from ratepayers. PG&E filed an application for rehearing. In D.91-12-024, the Commission denied rehearing on contract interpretation, but granted limited rehearing on ratemaking treatment of the refund. PG&E made the required refund to Salz.

TURN first entered an appearance at an August 10, 1992 prehearing conference in the rehearing phase of this case. The parties agreed that an evidentiary hearing on ratemaking issues was not necessary. The rehearing was submitted on receipt of a declaration from PG&E and briefs from PG&E and TURN.

In D.95-06-010, the Commission resolved the ratemaking issue, and found TURN eligible for compensation in the rehearing phase. The Commission again ordered that PG&E should not recover the refund amount from ratepayers, based on strict interpretation of PG&E's Negotiated Revenue Stability Account (NRSA) tariff in effect during the time of the dispute between Salz and PG&E.

On August 10, 1995, TURN filed a timely request for \$4,547.70 in compensation for its contributions to D.95-06-010. Public Utilities (PU) Code § 1804(c) allows eligible customer groups or organizations to file such requests following issuance of a final order or decision by the Commission. According to Rule 76.72 of the Commission's Rules of Practice and Procedure, a final order is one that resolves an issue for which a substantial contribution is claimed. It need not be a decision that closes a proceeding.

The elements of TURN's request are:

\$ 3,535.00	Attorney compensation for Peter Allen, 19.25 hours at \$150 per hour, 3.5 hours at \$185 per hour
965.00	Attorney compensation for Michel Florio, 4 hours at \$210 per hour, 0.5 hours at \$250 per hour
43.20	Photocopying expenses
+ 4.50	Postage costs
\$ 4,547.70	Total request.

The lower hourly rates for Allen and Florio apply to work from August through October 1992, when the prehearing conference and

briefing in the rehearing phase occurred. The higher rates apply to work on TURN's compensation request during August 1995.

TURN did not allocate its time by issue because the rehearing phase addressed only one issue--whether shareholders or ratepayers should be responsible for the refund to Salz.

No party protested or commented on TURN's request.

With the issuance of this decision, all outstanding issues in the case have been resolved. The case can be closed.

3. Substantial Contribution

Under PU Code § 1804(e), in order to award compensation the Commission must determine whether or not a consumer, representative, or organization has made a substantial contribution to a final order or decision. PU Code § 1802(g), in effect in 1992, when TURN spent most of the time for which it seeks compensation, defined that term:

"'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

Effective January 1, 1993, the Legislature amended the definition to add the following language, now found in PU Code § 1802(h):

"Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or 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 preparing or presenting that contention or recommendation."

TURN asserts that its accomplishments in the rehearing phase of this case have met and surpassed the minimum requirements

for establishing a substantial contribution. Apart from PG&E, no other party participated in the rehearing phase. TURN argued that shareholders, not ratepayers, should bear the cost of the refund to Salz, and the Commission adopted this position in D.95-06-010. TURN claims this was a substantial contribution.

The Commission adopted TURN's recommended outcome in D.95-06-010, but it did not completely endorse TURN's reasoning. TURN argued that shareholders should bear the cost of the refund "based on broad policy concerns, not a mechanical application of NRSA provisions." (D.95-06-010, at mimeo. p. 4.) The Commission ended its discussion of responsibility for refund costs by stating:

"This outcome is supported by TURN's argument that ratepayers should not pay for PG&E's errors.... However, the principal reason for assigning refund costs to shareholders is strict interpretation of the NRSA tariff." (D.95-06-010, at mimeo. p. 6.)

The Commission's analysis of NRSA provisions did not depend on TURN's contributions, but TURN did directly contribute to Commission deliberations in three ways. First, TURN's arguments supported the outcome, as cited above. Second, the Commission rejected the option of assigning refund costs to ratepayers based on TURN's recommendation. (D.95-06-010, at mimeo. p. 5.) Third, TURN's presence at the rehearing as the only party opposing PG&E helped to develop the record and to focus our attention on the relevant issues. In sum, TURN made a substantial contribution to our analysis and eventual decision in the rehearing phase. Pursuant to PU Code §§ 1802(h) and 1804(e), we will award TURN compensation for all of its reasonable costs of participation.

4. Hourly Rates

TURN requests an hourly rate of \$150 for the work of attorney Peter Allen during 1992. The Commission has previously found an hourly rate of \$150 to be reasonable for Allen and has awarded TURN compensation for 1992 work at that rate.

(D.93-10-045, discussion at mimeo. pp. 17-18, Finding of Fact 3 at mimeo. p. 25.) TURN requests an hourly rate of \$185 for Allen's work during 1995, but TURN reserves the right to seek a higher rate for 1995 work in future compensation requests. The Commission has previously found an hourly rate of \$185 to be reasonable for Allen and has awarded TURN compensation for 1994 work at that rate.

(D.95-05-003, discussion at mimeo. pp. 9-11.) We will award compensation for Allen's time at the requested rates.

TURN requests an hourly rate of \$210 for the work of attorney Michel Florio during the second half of 1992. The Commission has previously found an hourly rate of \$210 to be reasonable for Florio and has awarded TURN compensation for work after mid-1992 at that rate. (D.93-04-048, Finding of Fact 10 at mimeo. p. 15.) TURN requests an hourly rate of \$250 for Florio's work during the second half of 1995, but TURN reserves the right to seek a higher rate for late 1995 work in future compensation requests. The Commission has previously found an hourly rate of \$250 to be reasonable for Florio and has awarded TURN compensation for work at that rate during the period beginning July 1, 1994. (D.95-04-050, Finding of Fact 7 at mimeo. p. 10.) In past years, the Commission has evaluated Florio's hourly rate on a fiscal year basis. We will award compensation for Florio's time at the requested rates.

5. Other Costs

TURN seeks compensation for \$43.20 of photocopying expenses and \$4.50 of postage costs. The total of \$47.70 represents 1.0% of the requested award. Considering the substance of this case, the amounts requested are reasonable.

6. Adopted Award

We will award TURN \$4,547.70 in compensation, as requested. This amount should be paid by PG&E, as required by PU Code § 1807. It is ironic that ratepayers should pay for TURN's contributions to a decision that assigns refund costs to

shareholders, but PU Code § 1807 requires that any compensation award be recovered in customer rates. Interest should accrue on the amount, commencing 75 days after TURN filed its compensation request. Pursuant to PU Code § 1804(d), 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 \$4,547.70 in compensation for its contributions to D.95-06-010.
2. No party protested or commented on TURN's request.
3. TURN has adequately described the services and expenditures included in its compensation request.
4. TURN has made substantial contributions to D.95-06-010 regarding assignment of refund costs to shareholders.
5. Compensation for 19.25 hours of work during 1992, and for 3.5 hours of work during 1995, by attorney Peter Allen is reasonable and should be granted.
6. Hourly rates of \$150 for work by attorney Peter Allen during 1992, and \$185 for work by Allen during 1995, are fair and reasonable and do not exceed market rates for work of attorneys with comparable training and experience.
7. Compensation for 4 hours of work during the second half of 1992, and for 0.5 hours of work during the second half of 1995, by attorney Michel Florio is reasonable and should be granted.
8. Hourly rates of \$210 for work by attorney Michel Florio during the second half of 1992, and \$250 for work by Florio during the second half of 1995, are fair and reasonable and do not exceed market rates for work of attorneys with comparable training and experience.
9. Compensation for \$47.70 of photocopying expenses and postage costs is reasonable and should be granted.
10. All issues in this case have been resolved.

Conclusions of Law

1. TURN is eligible for compensation in the rehearing phase of this case.
2. TURN should be compensated \$4,547.70, plus interest, for its contributions to D.95-06-010.
3. PG&E should pay the awarded compensation.
4. The Commission may audit TURN's records and books to the extent necessary to verify the basis for this award.
5. This proceeding should be closed.
6. This decision should become effective today, so that TURN can receive its compensation promptly.

O R D E R

IT IS ORDERED that:

1. The August 10, 1995 request of Toward Utility Rate Normalization (TURN) for intervenor compensation is granted. TURN is awarded \$4,547.70, plus interest, in compensation for its contributions to Decision 95-06-010.
2. Pacific Gas and Electric Company shall, within 30 days of the effective date of this decision, pay TURN \$4,547.70, plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release; G.13, commencing October 24, 1995 until payment is made.

3. This proceeding is closed.
This order is effective today.
Dated November 21, 1995, at San Francisco, California.

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