

Mailed

JUL 17 1996

ALJ/KLM/JAR/jac

000 20-02 000

000 20-02 000

**ORIGINAL**

Decision 96-07-045, July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
Application of GTE California (U 1002 C) for Review of the Operations of the Incentive-Based Regulatory Framework Adopted in Decision 89-10-031.

Application 92-05-002 (Filed May 1, 1992)

Application 92-05-004 (Filed May 1, 1992)

And Related Matter.

**OPINION GRANTING INTERVENOR COMPENSATION**

This decision grants Toward Utility Rate Normalization (TURN) \$45,131 in compensation for its contribution to the interim opinion issued in this proceeding.

**Background**

On August 4, 1994, pursuant to Public Utilities (PU) Code Section 1801 et seq., TURN timely filed a Request for an Award of Compensation based on its contribution to Decision (D.) 94-06-011. TURN has previously been found eligible for such compensation in this proceeding. On September 6, Pacific Bell (Pacific) filed a Response opposing TURN's application. On September 6, 1994, GTE California Incorporated (GTEC) filed a Response opposing two elements of TURN's request. On September 20, 1994, TURN submitted a reply to Pacific's and GTEC's opposition. On September 21, 1994, the Division of Ratepayer Advocates (DRA) submitted a reply to Pacific's opposition.

Although TURN

**RECEIVED**  
D.94-06-11

issued by the Commission on June 8, 1994, involved litigation over the 1992 Review of the New Regulatory Framework (NRF), primarily as it pertained to Pacific. In an earlier decision on the NRF, the Commission approved two settlement agreements reached between GTEC and the various parties through mediation. (D.93-09-038.) Following that proceeding, the Commission authorized an award of compensation for TURN in the amount of \$67,907. (D.95-01-017.)

**II. Request for Compensation**

TURN seeks \$45,131 for its contribution to D.94-06-011, based on the cost of its advocate's fees (\$43,040) and other expenses (\$2,091) incurred in the course of litigation.

In support of its request, TURN relies on PU Code Section 1802(h) which provides:

"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."

TURN argues that it made substantial contributions to D.94-06-011 regarding rate of return, sharing and productivity, factor eligibility, dues and donations, and public audit requirements under PU Code Section 314.5.

Furthermore, TURN argues that the similarity of arguments made by other parties to the litigation does not bar its request, so long as its participation "materially supplements, complements, or contributes to the presentation of another party." (PU Code Section 1802.5.) Although TURN

presented evidence on its own behalf and as part of the CARE coalition,<sup>1</sup> it argues that it avoided duplicating the efforts of other parties, in accord with legislative policy governing compensation requests. (See PU Code Section 1801.3(f)). In particular, TURN cites its advocacy on behalf of small business and residential ratepayers as a unique contribution to the litigation.<sup>2</sup> Responses to TURN's Request III

Furthermore, TURN argues that denying its request because its contentions were similar to those of other parties would discourage it and other groups from participating in future proceedings, thwarting the legislative policy in favor of "effective and efficient participation of all groups that have a stake in the public utility regulation process" (PU Code Section 1801.3(b)). In particular, TURN argues that denying or reducing its request would discourage coalition building.<sup>3</sup>

Furthermore, Pacific describes the CARE coalition of CARE is an acronym for California Alliance for Ratepayer Equity. Along with TURN, CARE's members included: California Bankers Clearing House Association; the County of Los Angeles; Tele-Communications Association; Centex Telemanagement; MCI Telecommunications Corporation (MCI); Sprint Communications Company, L.P.; the Utility Consumers Action Network; the California/Nevada Community Actions Associations; and the City of San Diego.

In its reply to Pacific, TURN mentions as an example its support within the coalition for a higher productivity factor than the interexchange members of CARE would have otherwise advocated.

In its reply to Pacific, TURN notes that entities with overlapping concerns are increasingly forming coalitions to participate in telecommunications matters. Coalitions allow small intervenors to pool their resources, lending their proposals more political clout, and giving them a more effective voice against the better-funded utilities.

TURN seeks an increase in the hourly rate for its attorney to \$215 for 1994 and \$200 for 1993. It relies on law-firm-survey results, as well as a recent Commission decision approving compensation for TURN for 1994 and 1993 time at \$215 and \$200, respectively. (See TURN v. Pacific Bell, D.94-09-022.)

**III. Responses to TURN's Request**

**A. Pacific's Reply**

In its reply, Pacific argues that the Commission should either deny TURN's request or award a significantly lower amount. With regard to rate of return, sharing, and productivity issues, Pacific argues that TURN's participation was minimal or merely duplicative of the efforts of other groups representing the same interests, and was unnecessary for a fair determination of the proceeding. (See PU Code Section 1801.3.)

Furthermore, Pacific describes the CARE coalition, of which TURN was a member, as a self-described term used by a group of individuals, each of which separately argued its own position on the issues. In this regard, Pacific disputes TURN's assertion that it played an integral role in developing the testimony of Terry Murray, a witness jointly sponsored by CARE members to address rate of return, sharing, and productivity issues. Pacific argues that TURN is not entitled to compensation under the Code because it failed to demonstrate beyond vague assertions that Ms. Murray's testimony would have been any different had TURN not participated.

With regard to Z factor eligibility, Pacific argues that TURN did not make a substantial contribution because the Commission's decision did not establish a new requirement based on TURN's contentions, but merely clarified existing Z factor

guidelines. Pacific further argues that TURN's participation on this issue was unnecessary and duplicative because DRA made a similar recommendation to the Commission.

Finally, Pacific argues that TURN made no substantial contribution to the Commission's decision regarding PU Code Section 314.5 because it merely urged the Commission to follow existing public audit requirements.

**B. DRA's Reply to Pacific**

DRA initially notes that as a policy it comments on routine matters such as compensation requests only in exceptional circumstances, but that it felt compelled to respond in this case because of the "vicious and demeaning tone" of Pacific's opposition. Without taking a position on the dollar amount of TURN's request, DRA submits that TURN's contributions to the subject decision were "meaningful, useful, and significant," and that DRA believes TURN put "far more time and effort" into the instant proceeding than its request reflects. Furthermore, DRA argues that TURN's participation in CARE should not preclude it from compensation.

**C. GTEC's Reply**

GTEC's first objection relates to the compensation request filed by TURN pursuant to D.93-09-038, in which the Commission approved two settlement agreements between GTEC, TURN, and the various other parties on economic issues. GTEC argues, as it did in response to TURN's request in the previous case, that the hours of Linda Filchev, who researched dues and donations issues for TURN, should be apportioned partially to Pacific because the issue was presented for resolution and was ultimately resolved in D.94-06-011. It notes that TURN is claiming a substantial contribution on the dues and donations. The party's contribution duplicates the participation of similar

issue in the subject decision, and that Pacific should therefore share in the cost of Ms. Filchev's hours.

In addition, GTEC objects to TURN's request for hourly rate increases to \$215 for 1994 time and \$200 for 1993 time. It notes that the Commission in the past has declined to base compensation rates solely on law-firm-survey results. GTEC further argues that TURN's request for rate increases should be considered in light of contemporaneous economic conditions in California, relying on Re Southern California Gas Co.

D.92-032067.

iv. Reasonableness of TURN's Request

Without taking a position on the dollar amount of compensation, PU Code Section 1801 et seq. establishes authority and procedures for awarding intervenor compensation in Commission proceedings. A party is entitled to "reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs" (PU Code Section 1803) so long as that party makes a "substantial contribution to the adoption, in whole or in part of the Commission's order or decision." (PU Code Section 1803(a))

A party is considered to have made a substantial contribution if "the Commission in the making of its 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." (PU Code Section 1802(h)) The code further provides that participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation (PU Code Section 1802.5) However, the code precludes compensation where the party's contribution "duplicates the participation of similar

interests otherwise adequately represented or participation that is not necessary for a full determination of the hearing. (PU Code Section 1801.3(f)) If compensation is warranted, the proper amount shall take into consideration the market rates paid to persons of similar comparable training and experience who offer similar services. (PU Code Section 1806.) Thus, it must be determined whether and to what extent TURN made substantial contributions to D.94-06-011 and the appropriate compensation for those contributions, taking into account market rates for comparable services.

Did TURN Make a Substantial Contribution to the Participation in D.94-06-011?

Rate of Return, Sharing, and Productivity Issues  
Pacific's reliance on Section 1801.3(f) is misplaced. TURN's contribution on rate of return, sharing, and productivity issues was neither minimal nor duplicative. By all accounts, save Pacific's, TURN played a significant role on these issues in the litigation leading to D.94-06-011.

Even if TURN's contentions in the testimony it offered as an individual party were largely identical to those of other parties, it would still be entitled to compensation. The code precludes compensation where the requesting party duplicated the participation of similar interests otherwise adequately represented. (PU Code Section 1801.3(f) (emphasis added)). TURN correctly notes that it was the only intervenor in this case representing exclusively the interests of residential and small utility members of the requesting party.

With regard to rate of return, sharing, and productivity issues, no party, including Pacific, disputes TURN's assertion that the Commission adopted in whole or in part one or more of the factual contentions, legal contentions, or specific policy or procedural recommendations presented by (TURN).

business ratepayers. The fact that TURN's interest in arguing for lower rate of return measures and other provisions was to obtain a financial benefit does not change (the result of other parties, including members of CARE, may have been pursuing some financial benefit, but not on behalf of TURN's constituency, which has distinct goals and objectives from, for example, AT&T Communications of California Inc. or MCI). TURN presented an important perspective, one which would not normally be offered by other parties.

In addition, TURN is entitled to compensation for its participation in the CARE coalition. Pacific's characterization of CARE as a thin shell for a grouping of individual parties ignores a virtue of collective action in Commission proceedings. For example, by jointly sponsoring Ms. Murray's testimony, rather than offering its own witness on the same issues, TURN reduced, rather than increased, the unnecessary duplication of effort of which Pacific is so concerned.

To be sure, we do not award compensation for efforts which merely parrot those of other parties. Recently, in D.96-06-029 we discounted TURN's requested hours by 10% in recognition that TURN had duplicated the efforts of others in the settlement process in that proceeding. Here, we do not find that TURN's efforts were duplicative and therefore grant TURN compensation for all of its requested hours.

Under Pacific's interpretation of the PU Code, no testimony jointly offered by a coalition would entitle any of the coalition's members to compensation, unless the requesting party could conclusively prove it alone was responsible for the particular contention eventually adopted in whole or in part in the order or decision. Without such a showing, Pacific's position would force TURN and other coalition members to choose



between acting as silent partners only, or not participating at all. The code recognizes this, providing that so long as the requesting party's participation materially supplements, complements, or contributes to the presentation of another party, including the commission staff, it is fully eligible for compensation. (PU Code Section 1802.5.) By avoiding unnecessary duplication of effort and focusing on the interests of residential and small business ratepayers, TURN clearly met this standard. With regard to Terry Murray's testimony, for example, it is enough that TURN worked as a member of CARE to ensure that her testimony reflected the concerns of TURN's constituency.

Finally, awarding TURN compensation for its contribution to rate of return, sharing, and productivity issues, both as an individual party and as a member of CARE, promotes the policy in favor of effective and efficient participation of all groups that have a stake in the public utility regulation process. (PU Code Section 1801.3(b))

**Z Factor**

TURN made a substantial contribution to Z factor eligibility, whether the Commission's decision established a new requirement, or merely clarified existing guidelines. Semantics aside, TURN's and Pacific's opposing positions on exogenous costs show that the matter was far from settled prior to the Commission's decision. In addition, the fact that DRA and TURN presented similar arguments on this issue does not preclude TURN from compensation for TURN's effort materially complemented DRA's, entitling it to compensation. (See PU Code Section 1802.5.)

**3. Dues and Donations**

Pacific does not contest TURN's compensation request for its substantial contribution to the dues and donations issue,

Approximately 15 hours claimed by TURN for substantial

and it is clear that the Commission followed TURN's recommendations on that issue. (See D.94-06-011, at 89.)

#### 4. Miscellaneous Contributions

The Commission followed TURN's recommendations regarding PU Code Section 314.5's public audit requirements. Although the decision reflected existing law, the fact that the Commission did not follow Section 314.5's mandate in the initial NRF is evidence of a substantial contribution by TURN on this issue.

#### B. What is the Appropriate Level of Compensation for TURN in This Proceeding?

##### 1. Hours Claimed for Advocates Time

TURN has provided a detailed breakdown of the time spent by Attorney Tom Long in this proceeding, including 98.40 hours in 1993 and 108.65 hours in 1994. TURN has also provided a daily log segregating the hours by task where feasible, in accordance with the guidelines adopted in D.85-08-012. TURN urges that the hours for which it is claiming compensation were all necessarily incurred for it to make substantial contributions to the decision, including the time entered in the log for "base" activities, such as phone calls, reviewing documents, attendance at prehearing conferences, and other activities that did not vary significantly depending on the specific legal issue involved.

GTEC raised the only objection to the hours claimed by Linda Filchev. GTEC argues some of her hours should be apportioned to Pacific. D.93-09-038 apportioned all of her hours to GTEC. Normally, we would apportion some of Ms. Filchev's hours to Pacific. However, fairness and administrative simplicity dictate that all of Ms. Filchev's hours, on dues and donations should remain the responsibility of GTEC. Approximately 15 hours claimed by TURN for substantial

contributions to the subject decision relate to work which affects GTEC. We herein direct Pacific but not GTEC to assume responsibility for associated costs. GTEC is therefore not harmed by the earlier order. GTEC should have filed a petition to modify D.93-09-038 rather than filing a response to TURN's request for compensation here.

Considering its extensive participation in this case, the hours claimed by TURN for its advocate's time are reasonable. Therefore, TURN is entitled to compensation at the appropriate hourly rate plus costs.

**2. Hourly Rates Requested for TURN's Advocate Tom Long**

TURN seeks compensation for Mr. Long's work in 1993 and 1994 at rates already approved by the Commission in other Commission proceedings for work during those two years. In D.94-09-022, the Commission noted Mr. Long's experience clerking for a U.S. District Court Judge and as a litigation associate for Morrison and Foerster in San Francisco. That decision awarded TURN the compensation requested for Mr. Long at rates of \$215 per hour for 1994 and \$200 for 1993 for Mr. Long. Pursuant to that decision, TURN is entitled to compensation for Mr. Long's time at the hourly rates requested.

**3. Other Costs**

TURN seeks \$2,091 in telephone, facsimile, postage, overnight mail charges, and photocopying costs expended in support of its participation in this case. These costs are reasonable. Therefore, TURN is entitled to compensation for them based on its substantial contributions to D.94-06-011.

Findings of Fact

1. TURN filed this request for compensation in a timely manner and consistent with the procedural requirements of PU Code Section 1804 et seq.

2. TURN made a substantial contribution to D.94-06-011 as set forth herein.

3. The hours claimed by TURN for the participation of its advocate Tom Long are reasonable.

4. TURN's Hourly rate requests for Mr. Long are reasonable.

5. TURN's other costs expended in support of its participation in this case are reasonable.

Conclusion of Law

TURN should be granted \$45,131 for its contributions to this proceeding. Interest on this amount should accrue beginning October 18, 1995, which is 75 days from the date TURN filed its request for compensation in this proceeding.

ORDER  
IT IS ORDERED that:

1. The request for compensation filed by Toward Utility, Rate Normalization (TURN) in this proceeding is granted.

2. Pacific Bell shall, within 30 days of the effective date of this order, pay TURN \$45,131 plus interest at the rate earned on prime, three-month commercial paper as reported in the

A.92-05-002, A.92-05-004 ALJ/KIM/JAR/jac \*

Federal Reserve Statistical Release G.13, such interest beginning October 18, 1995 and continuing until full payment is made.

This order is effective today.

Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON  
President

DANIEL Wm. FESSLER

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners