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ALJ/CMW/gab

Decision 96-07-046 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and )  
Electric Company for Commission )  
Order Finding that Gas and )  
Electric Operations During the )  
Reasonableness Review Period from )  
January 1, 1992, to December 31, )  
1992, were Prudent. )

**ORIGINAL**

Application 93-04-011  
(Filed April 1, 1993)

OPINION GRANTING INTERVENOR COMPENSATION

This decision grants intervenor compensation to Toward Utility Rate Normalization (TURN) in the amount of \$35,695 for TURN's contribution to Decision (D.) 95-12-046 related to the Commission's review of the reasonableness of Pacific Gas & Electric Company's (PG&E) fifteen-year contract for capacity on the Transwestern Pipeline Company's (Transwestern) expansion project.

I. Requirements for Awards of Compensation

Intervenors who seek compensation for their costs of participation in Commission proceedings must file a request for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Customers are eligible for compensation of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in hearings or proceedings, when the customer's presentation makes a substantial contribution to the Commission's order or decision and where failure to award costs

would impose a significant financial hardship on the customer. (PU Code § 1803.)

An intervenor must file notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. (PU Code § 1804(a).) The NOI must indicate the nature and extent of the customer's planned participation and include an itemized estimate of the amount of compensation anticipated. (PU Code § 1804(a)(2)(A)(I-ii).) Within 60 days after a final decision of the Commission is issued, an intervenor requesting compensation must file a request for an award. At a minimum, the request must include "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." (PU Code § 1804(c).) A "substantial contribution" is made where,

"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." (PU Code § 1802(h).)

Within 75 days of the filing of a request for compensation, the Commission must issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. (PU Code § 1804(e).) The level of compensation must take into account the market rate paid to persons of comparable training and experience who offer similar services. (PU Code § 1806.)

**II. Timeliness of TURN's Filings**

On June 14, 1993, TURN filed its NOI in this proceeding. Although two days late, the assigned Administrative Law Judge (ALJ) in conformance with PU Code § 1801.3(b),<sup>1</sup> did not deny TURN's request on grounds of timeliness, but rather, in a ruling dated August 17, 1993, found that TURN had satisfied the requirements of PU Code § 1804(a) and was eligible for compensation. TURN was found to have demonstrated significant financial hardship on the basis of an earlier finding by the Commission in D.92-10-056 dated October 21, 1992. Under § 1804(b)(1), this finding of financial hardship created a rebuttable presumption of eligibility for compensation in proceedings commencing within one year of the date of the finding. Rule 76.76 provides that "[a] customer found eligible for an award of compensation in one phase of a proceeding remains eligible in later phases." Consequently, TURN remains eligible for compensation under § 1804.

On January 23, 1996, TURN timely filed its request for award of compensation in these proceedings.<sup>2</sup> No party protested or commented on TURN's request for compensation.

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1 PU Code § 1801.3 reads, in relevant part, "It is the intent of the Legislature that: ... (b) The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process."

2 TURN's request for compensation was filed within 60 days of December 20, 1995, the date of issuance of D.95-12-046.

III. Did TURN Make a Substantial Contribution to D.95-12-046?

TURN claims that its participation in the proceedings leading to a decision in this case has surpassed the minimum requirements for establishing a substantial contribution under PU Code § 1802(h). TURN points to the following specific contributions:

- a. TURN submitted rebuttal testimony and filed briefs and comments asserting that PG&E's subscription to capacity on Transwestern was unreasonable.
- b. TURN's testimony and briefs addressed issues including, but not limited to: 1) Why its prior support of the Transwestern subscription should not be considered evidence of reasonableness; 2) PG&E's failure to consider the Transwestern subscription in the context of its integrated resource planning responsibilities; 3) The mismatch between PG&E's interstate and intrastate capacity; and 4) Failure of PG&E to negotiate adequate contract termination rights or to prove any ratepayer benefits.

TURN asserts that its positions were fully adopted by the Commission in D.95-12-046, specifically in Findings of Fact 5, 14, 16, 18, 21, 22, and 23 and Conclusions of Law 1-5.

Based on the specific instances cited, we find that TURN has made a substantial contribution to D.95-12-046.

IV. Did TURN's Contributions Duplicate Those of Other Parties?

The Commission has previously reduced intervenor compensation based on duplication of contributions.<sup>3</sup> Although both Division of Ratepayer Advocates (DRA) and El Paso Natural Gas Company (El Paso), as well as TURN, recommended a finding of unreasonableness in the instant case, TURN contends that it did not duplicate the work of these parties, but rather complemented their efforts. TURN claims that its participation in this proceeding was necessitated by Transwestern's testimony that TURN's prior statements represented evidence of the reasonableness of PG&E's subscription. El Paso, a major party through the hearing stage, chose not to participate in the briefing process, leaving TURN to shoulder the majority of this burden. TURN asserts that because of the efforts of other parties, it was able to minimize its level of participation in hearings and instead focused its efforts on briefing, commenting, and supporting the Proposed Decision in ex parte meetings.

Some duplication of effort is anticipated whenever there are multiple parties to a proceeding. The duplication of effort evident in this case is not sufficient to justify any reduction in compensation. Because of TURN's unique contributions to this proceeding, we find that TURN's efforts did not significantly duplicate those of the other parties.

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<sup>3</sup> See D.93-06-022. (Award reduced by 10% due to apparent duplication of work.)

V. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$35,695 as follows:

Attorneys / Expert Witnesses

M. P. Florio

7.00 hours @ \$260/hour	(FY 7/95-6/96)	\$ 1,820
32.50 hours @ \$250/hour	(FY 7/94-6/95)	\$ 8,125
27.00 hours @ \$235/hour	(FY 7/93-6/94)	\$ 6,345

P. V. Allen

5.00 hours @ \$185/hour	(FY 7/93-6/95)	\$ 925
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T. Mueller

35.75 hours @ \$185/hour	(FY 7/95-6/96)	\$ 6,614
67.50 hours @ \$160/hour	(FY 7/94-6/95)	\$ 10,800

Subtotal		\$ 34,629
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Other Costs

Photocopying	\$ 887
Postage	\$ 152
Fax	\$ 27
<b>TOTAL</b>	<b>\$ 35,695</b>

TURN has submitted a detailed breakdown of the hours spent by its attorneys preparing for and participating in these proceedings. Although very detailed as to activity, many of the entries do not indicate the subject matter of the work performed. TURN claims that any attempt at further allocation of the work by issue is infeasible and unnecessary as its position was fully adopted by the Commission and due to the limited number of hours involved. TURN's documentation of its activities is similar to that

approved in prior requests and is sufficient for an award of compensation in this case.

In its NOI of June 14, 1993, TURN estimated that it would devote 150 total hours of attorney and expert witness time to this case. The actual 174 hours of work performed by TURN is within 16.5% of its estimate. Considering the issues involved and the length of these proceedings, we find the hours devoted by TURN in this case to be reasonable.

**A. Hourly Rates Requested for Advocates**

All rates requested for TURN's advocates have been approved in prior decisions of the Commission.<sup>4</sup> Because we have previously approved these rates, we apply them in this case. We take this opportunity, however, to specifically address the increase in rates for the fiscal year ending June 1996 for Mr. Florio and Ms. Mueller.

Computation of compensation must take into consideration the market rates paid to persons of comparable training and experience who offer similar services. In no case may the compensation awarded exceed the rate paid for comparable services by the Commission or the public utility, whichever is greater. (PU Code § 1806). Awards of compensation to intervenors under § 1801 et seq. are never mandatory, but always at the discretion of the Commission. It is our goal to encourage intervenors to participate fully in our proceedings in order to ensure that our decisions integrate the wisdom of numerous perspectives. Intervenors should note, however, that even when warranted and approved, the fees

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<sup>4</sup> See D.96-02-020, D.95-05-003, D.93-04-048 (Florio), D.95-05-003, D.95-04-054, D.95-01-017 (Allen), D.96-02-020, D.95-05-003, (Mueller).

awarded for the work of a customer's advocates and expert witnesses are limited to those which are "reasonable." (PU Code § 1801.) "Reasonable," as used here, means not only that the rate charged by the advocate is justified based on the rates earned by others in the field with similar experience and skill, but also that the level of expertise of the advocate or expert is appropriate for the task performed. Intervenors are, of course, free to hire the most highly priced attorneys and experts available to represent their interests before the Commission. We, however, are limited to approving only those rates which are reasonable. Any shortfall must be borne by the intervenor.

Mr. Florio's hourly rate is typically reviewed by the Commission each fiscal year. (D.95-04-050.) For the fiscal year ending June 30, 1995, the Commission approved an hourly rate for Mr. Florio of \$250. (D.96-04-087.) The requested increase of \$10 per hour represents a 3.1% rise in the rate paid Mr. Florio. In support of this increase, TURN has provided a 1995 survey of nine large San Francisco law firms, published in the June 5, 1995 issue of *Of Counsel*. This survey indicates an average hourly billing rate for "high" partners of \$326 and for "low" partners at \$205. Average for all partners is \$266. TURN's request of \$260 per hour falls just below the average billed for all partners at the nine firms surveyed. Mr. Florio earned his J.D. from New York University School of Law and an M.P.A. from the Woodrow Wilson School of Public Affairs at Princeton University. He was admitted to the California bar in 1978 and has been continuously engaged in practice before the Commission on energy-related issues for over 17 years. Mr. Florio's credentials and experience are equivalent to those of a partner at a large San Francisco law firm. As further evidence of the reasonableness of a \$260 hourly rate for Mr. Florio, TURN has



provided signed declarations of two experienced practitioners, Mr. Martin A. Mattes and Mr. James Squeri. Each of these statements supports a rate of \$260 per hour for the most recent work of Mr. Florio.

The rate of \$260 per hour awarded to Mr. Florio in D.96-06-020 represents the highest hourly rate approved by the Commission for the reasonable compensation of an intervenor's attorney. Only two other intervenor's attorneys have been awarded the next highest rate of \$250.<sup>5</sup> Because the increase has been approved in a previous decision of this Commission, is commensurate with the general rate of inflation, is justifiable based on his level of skill and experience, and because the expertise of a partner-level attorney is appropriate for the work performed by him for TURN, we find an hourly rate of \$260 to be reasonable for Mr. Florio for work performed in these proceedings in the fiscal year ending June 30, 1996.

TURN requests an hourly rate of \$185 for the work Ms. Mueller performed in the fiscal year ending June 30, 1996, (as approved in D.96-06-020). Previously, a rate of \$160 per hour was approved for Ms. Mueller for her work in the fiscal year ending June 30, 1995. (D.96-04-087.) This request represents a 15.6% increase in her hourly rate from 1995 to 1996.

As support for this increase, TURN directs us to the above-referenced *Of Counsel* survey which indicates an hourly billing rate for "high" associates of \$204 and for "low" associates of \$111 in 1995. A rate of \$185 per hour falls in the upper quartile of rates paid for all associates in the survey.

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<sup>5</sup> Mr. Robert Gnaizda (D.95-03-007) and Mr. Peter Hanschen (D.96-02-011).

Ms. Mueller's unique qualifications and skills warrant such a rate. She is a previous employee of the ALJ Division and, in addition to her JD, is a doctoral candidate in the field of English Literature. As Mr. Florio has taken on a more supervisory role at TURN, Ms. Mueller has assumed responsibility for most of TURN's litigation in natural gas proceedings. Her regulatory knowledge and research and writing skills are well documented in this proceeding. After El Paso chose not to participate in the briefing process, TURN was able to make a significant contribution to a lengthy and complex proceeding with just over 75 hours billed by Ms. Mueller for preparing TURN's briefs and written comments. We agree with TURN that Ms. Mueller's particular skills place her in the upper level of associates, justifying a billing rate of \$185 per hour. This rate is the same as approved by the Commission for the work of Ms. Mueller's predecessor at TURN, Mr. Allen. (D.95-05-003.) We find that an hourly rate of \$185 per hour for the work done by Ms. Mueller in the fiscal year ended June 30, 1996 is reasonable.

**B. Other Costs**

Other costs are relatively small, equaling only 3% of attorney's fees. TURN affirms that copying, postage, and fax expenses relate exclusively to these proceedings. These other costs are reasonable considering TURN's level of participation in this case.

VI. Award

We award TURN \$35,695 as follows:

Total Attorney's Fees Requested	\$ 34,629
Plus: Other Costs	<u>\$ 1,066</u>
Total Award	<u>\$ 35,695</u>

TURN is placed on notice that it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation is claimed.

Findings of Fact

1. TURN filed this request for compensation in a timely manner and consistent with the procedural requirements of PU Code § 1804 et seq.
2. TURN made a substantial contribution to D.95-12-046.
3. TURN's efforts did not significantly duplicate those of the other participants.
4. The hours claimed by TURN for the participation of its advocates are reasonable.
5. TURN's hourly rates requested for its advocates are reasonable.
6. TURN's other costs expended in support of its participation in this case are reasonable.

A.93-04-011 ALJ/CMW/gab \*

Conclusion of Law

TURN should be granted \$35,695 for its contributions to D.95-12-046. Interest on this amount should accrue beginning April 7, 1996, 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 to the extent set forth herein.

2. Within 30 days of the effective date of this order, Pacific Gas and Electric Company shall pay TURN \$35,695, plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release G.13, such interest beginning April 7, 1996, 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. NEEPER  
Commissioners