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Decision 96-10-072 October 25, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS)
 AND ELECTRIC COMPANY, for)
 authority to (i) Establish its)
 Authorized Rate of Return for)
 Common Equity, (ii) Establish its)
 authorized Capital Structure, (iii))
 Adjust its Cost Factors for)
 Embedded Debt and Preferred Stock,)
 and (iv) Establish its Overall)
 Rate of Return for Calendar)
 Year 1996.)
 (Electric and Gas) (U 39 M))

ORIGINAL

Application 95-05-016
(Filed May 8, 1995)

Application 95-05-017
(Filed May 8, 1995)

And Related Matters.

Application 95-05-021
(Filed May 8, 1995)

Application 95-05-022
(Filed May 8, 1995)

Application 95-05-023
(Filed May 8, 1995)

OPINION ON REQUESTS FOR INTERVENOR COMPENSATION

I. Summary

This decision grants Toward Utility Rate Normalization (TURN) \$33,745.04 as compensation for its contribution to Decision (D.) 95-11-062. TURN requests \$34,539.52 for its participation in this proceeding pursuant to Public Utilities

(PU) Code § 1803. This decision denies Energy Consulting Group's (ECG) and Economic & Technical Analysis Group's (ETAG) request for compensation of \$36,979.37 and \$93,383.83, respectively, for their participation in this proceeding.

II. Background

In November 1995, the Commission issued D.95-11-062. This decision established the cost of capital for calendar year 1996 for five California energy utilities: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Sierra Pacific Power Company (Sierra), and Southern California Gas Company (SoCalGas). In D.95-11-062, we adopted capital structures jointly proposed between the Division of Ratepayer Advocates (DRA) and the utilities. We established a 11.6% Rate of Return on Equity (ROE) as supported by the DRA, the Department of the Navy and Federal Executive Agencies (FBA), and Economic and Technology Analysis Group (ETAG). Last, we adopted a 50 basis point adder for PG&E's Pipeline Project.

III. Requirements for Awards of Compensation

Intervenors seeking compensation for their costs of participation in Commission proceedings must file a request for a finding of eligibility pursuant to PU Code §§ 1801-1812. An intervenor must file a 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 show the nature and extent of the customer's planned participation and include an itemized estimate of the amount of compensation anticipated. (PU Code § 1804)(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 the customer's substantial contribution to the hearing or proceeding. (PU Code § 1804(c).) Within 75 days of the filing of a request for compensation, the Commission must issue a decision that determines whether 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.)

Customers are eligible for compensation of reasonable advocates' fees, reasonable expert witness fees, and other reasonable costs preparing and participating in Commission hearings or proceedings. (PU Code § 1801.) Compensation of intervenor fees is not automatic:

"The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements: (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the Commission's order or decision.

(b) participation or intervention without an award of fees or costs imposes a significant financial hardship." (PU Code § 1803.)

IV. Compensation Requests

A. TURN

TURN seeks \$33,827.02 for its contribution to D.95-11-062 based upon the cost of its advocate's fees (\$23,562.50), expert witness and consulting fees (\$8,917.50), and other reasonable cost (\$1347.02). Additionally, TURN seeks \$712.50 in augmented compensation for its Reply to SCE's Response to its initial compensation request.

1. Did TURN make a Substantial Contribution?

TURN believes it made a substantial contribution to D.96-11-062. As defined by Section 1802(h):

"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."

Section 1802.5 also states 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 if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3."

TURN believes that its participation meets this criteria because the issue it raised -- Customer Deposits for ratemaking purposes -- was one of the few issues actually litigated. In its opening brief, TURN recommended that Customer Deposits for PG&E, SDG&E and SCE be explicitly recognized as part of the utilities' capital structure for ratemaking purposes.¹ TURN argued that since there was no accounting procedure for this small but significant source of capital, accounting methods should be developed to correct this oversight.

We agreed that Customer Deposits represented an important issue, however, we did not adopt TURN's recommendations. Instead, we noted,

We agree with the general concern of TURN but we feel that this issue is more akin to 'working cash' than to a combination of debt and equity. In other words, we believe that TURN's suggested alternative is probably the better solution. We will direct our staff to conduct workshops that should begin in the first quarter of 1996 that will reconsider the proper calculation of working cash, consistent with TURN's

¹ A utility collects a deposit from certain new customers with interest calculated at the 90-day Commercial Paper rate. There is a commission staff "standard practice" for the calculation of working cash written in 1969 that provides that noninterest bearing deposits will be credited against working cash.

second proposal. (D.95-11-062, mimeo., p. 13.)

TURN also noted that in addition to the above quoted language, the Commission addressed this issue in paragraphs 16 through 20 in its Findings of Fact, paragraph 7 of its Conclusions of Law, and Ordering Paragraphs 8 and 9. Based upon the foregoing, TURN believes that it has made a substantial contribution.

Responses to TURN's Request

SCE

SCE filed the only response to TURN's request. SCE asked that TURN's compensation be deferred until after the workshops are conducted and the Commission renders its decision on the merits of the Customer Deposit issue. SCE believes that if TURN's suggestions are rejected in the workshops, TURN's contribution to this proceeding becomes insignificant. Moreover, SCE argues that TURN's participation in this proceeding is incomplete until the workshops are completed. SCE's arguments for deferred compensation are invalid on both grounds.

When SCE asserts that suggestions not adopted by the Commission are not compensable, it misinterprets PU Code § 1802(h). It is not necessary that the intervenor's suggestions be adopted, the key is that the intervenor's presentation substantially helped the Commission in the making of its order or decision. Indeed, we held in D.94-10-029 that suggestions offered by TURN and later rejected by the Commission still proved

to be a substantial contribution.² In the present case, we find TURN's participation significant because it identified and analyzed a matter not previously considered in a cost of capital proceeding. We deny SCE's request to delay compensation until after the workshops because these workshops are akin to separate phases of the same proceeding. Accordingly, TURN may request compensation for these workshops pursuant to Rule 76.76 of the Commission's Rules of Practice and Procedure.³

2. Has TURN illustrated a significant Financial Hardship?

PU Code § 1803(b) requires an intervenor seeking an award of eligibility for compensation to show that its participation in the proceeding poses a significant financial

² In D.94-10-029 a Collaborative Group was formed in order to develop recommendations for a mechanism for recovering hazardous waste expenses. The group submitted a report and filed a Settlement Agreement. TURN participated in this collaborative process but had reservations about parts of the settlement. TURN later filed comments in opposition and proposed several modifications to the settlement.

Although TURN's suggested modifications were not adopted by the Commission, TURN made a substantial contribution during the collaborative process to the development of the alternative procedure for recovery of hazardous waste expenses. Since TURN and DRA were the only parties representing the consumer interest, and the adopted recovery process provides adequate safeguards for consumers, it was reasonably concluded that TURN made a substantial contribution in this proceeding.

³ Commission Rule 76.76 reads: "A customer found eligible for an award of compensation in one phase of the proceeding remains eligible in later phases, including any rehearing in the same proceeding."

hardship. As defined by PU Code § 1802(g), a significant financial hardship means that:

. . . either that the customer cannot afford, without undue hardship to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the cost of effective participation in the proceeding.

PU Code § 1804(b)(1) states that once a finding of significant financial hardship has been established there exists a rebuttable presumption of hardship in proceedings commencing within one year of the initial finding. On July 26, 1996 TURN filed a NOI to claim compensation. That notice identified a prior finding of significant hardship in Application 94-05-044, dated January 5, 1995. This cost of capital proceeding commenced within one year of the date of that finding; therefore the presumption applies here.

3. May TURN recover for its Reply to SCE's response?

Last, TURN requests an additional \$712.50 in compensation for its Reply to SCE's Response to its initial Request with Compensation. We shall grant TURN's request in accordance with D.96-06-029.⁴ The amount awarded is discussed

⁴ In D.96-06-029, the Commission awarded TURN an additional four hours of compensation for the additional time spent by its attorney in the preparation of a reply to a response by GTEC. Mimeo., p. 19.

below, but consistent with D.96-06-029, this amount is borne entirely by SCE.

4. What is the Appropriate Level of Compensation for TURN in this Proceeding?

TURN seeks a total of \$33,837.02 for its participation in this proceeding. It bills 3.75 hours of attorney M. P. Florio's time at \$250 an hour, 1.75 hours of attorney R. Finkelstein's time at \$200 an hour and it bills 99 hours of attorney T. P. Corr's time at \$225 an hour. Additionally, TURN bills 23.5 hours of expert witness W. B. Marcus' time at \$135 an hour, 76 hours of expert witness J. Nahigian's time at \$75 an hour, and .60 hours of expert witness R. Ruzovan's time at \$75 an hour. TURN also seeks \$1,347.02 in other litigation expenses, such as copying, telephone, Federal Express and postage costs. As noted above, TURN seeks augmentation of the above request to account for the cost of its reply to SCE's Response to its initial Request for Award of Compensation. TURN seeks an additional \$712.50; this amounts to .50 and 2.5 hours of attorney's Florio and Corr's time, respectively, and \$25 in photocopying and postage costs. Since the hourly rates of attorneys' and witnesses requested were authorized in D.96-05-052 of this year, the same hourly rate should be applied here. Therefore, we will approve the requested rates.

TURN also seeks \$1,347.02 in other litigation expenses. We find TURN's requests reasonable except the requested \$347.24 in meals and lodging for which TURN makes no showing to warrant a change of our policy of denying those types of expenses.

Accordingly, this amount is reduced from the litigation expense, leaving an award of \$999.78.

TURN's total award compensation is \$33,745.04 for its participation in the 1996 cost of capital proceeding, calculated as follows:

Professional Services

<u>Attorneys</u>	<u>Hours</u>	<u>Rates</u>	<u>Fees</u>
M. P. Florio	3.75	\$250	\$ 937.50
R. Finkelstein	1.75	\$200	\$ 350.00
T. P. Corr	99.00	\$225	\$ 22,275.00
 <u>Experts Witnesses</u>			
W. B. Marcus	23.50	\$135	\$ 3,172.50
J. Nahigian	76.00	\$ 75	\$ 5,700.00
G. Ruzzovan	.60	\$ 75	\$ 45.00
 <u>Other Costs</u>			
Photocopying			\$ 399.89
Postage			\$ 127.88
FedEx			\$ 220.00
Fax and Telephone expense			\$ 192.21
Parking and BART			\$ 60.00
 <u>Augmentation Costs</u>			
M. P. Florio	.50	\$250	\$ 125.00
T. P. Corr	2.50	\$225	\$ 562.00
Postage			\$ 25.00
Total			<u>\$ 33,745.04</u>

B. Requests by ECG and ETAG

Both ECG and ETAG filed timely NOIs claiming compensation in D.96-11-062. ECG seeks \$35,711.97 in advocate's fees (\$11,830.00), expert witness fees (\$23,800.00) and other

expenses (\$1,349.37), while ETAG seeks \$93,383.13 in advocate's fees (\$73,747.93), other expenses (\$2,331.15) and \$17,304.75 in deferred compensation by D.95-06-052.⁵ Unlike TURN, a not-for-profit group specifically organized to represent California utility ratepayers, ECG and ETAG are private utility consultants representing individual customers in this proceeding.⁶

1. Substantial Contribution

ECG

ECG argues that it made substantial contribution to D.95-11-062 regarding its participation in the Commission's adoption of the Joint Recommendation. ECG believes that although

⁵ In D.95-06-052, ETAG was granted compensation at 50% of its requested amount for its failure to comply with previous Commission direction to utilize the incremental approach to the 1995 costs of capital proceeding. Despite this failure we found ETAG's analysis of financial modeling and interest rate forecast helpful in our general understanding of financial models. We held that if ETAG participated in the 1996 cost of capital proceeding and included the incremental cost approach in its calculation of financial models it might be able to recover the difference in the 1995 proceeding. Because ETAG's contribution to D.95-11-062 has been deemed not significant, ETAG cannot recover this difference.

⁶ ECG represents Kenneth Meyer, its director and sole proprietor, as a residential customer of the Pacific Gas and Electric Company. ETAG is a partnership representing Ronald Knecht and Raymond Czahar, its two partners as residential customers of the Pacific Gas and Electric Company. TURN on the other hand is a non-profit consumer advocacy organization with a long history of representing the interest of residential and small commercial customers of California's utility companies before the Commission. TURN's Articles of Incorporation specifically authorize it to represent the interest of residential customers.

the Commission did not adopt its recommendation that the approved cost of capital not exceed a market-to-book ratio of one, this suggestion helped bring the parties to an agreement. ECG also believes that its proposal that the Commission consider the proper calculation of the utilities' discount rates significantly contributed to the Commission's adoption of the Joint Recommendation.

In its reply to ECG's request for compensation, SDG&E argues that the Commission should deny ECG's request regarding the market-to-book ratio and the calculation of utility discount rates. SDG&E argues that ECG's participation was insignificant or "de minimis" at best. SDG&E further disputes ECG's assertion that it played an integral role in the negotiations that led to the Joint Recommendation because the Commission did not adopt any of ECG's recommendations. Regarding ECG's contribution to the Joint Resolution, SDG&E argues that ECG did not make a substantial contribution because our decision found the issue of utility discounts beyond the scope of D.95-11-062. Overall, SDG&E argues that ECG failed to illustrate how, in whole or in part, any of ECG's factual contentions or specific recommendations helped us in our decision.

SCE also submits that ECG failed to make a substantial contribution to the proceedings. Moreover, SCE also argues that ECG was not an Edison customer pursuant to PU Code § 1802(b). Like SDG&E, SCE cites the Commission's rejection of ECG's recommendation of a market-to-book ratio not exceeding one and that the Commission's findings for present value analysis was outside the scope of the proceeding to support its contention

that ECG's participation was insignificant. Moreover, SCE believes that if compensation is granted, only PG&E's customers should bear the burden of ECG's efforts since it is the utility servicing ECG.

ECG's primary contribution to these proceedings was its suggestion that we set a 10% ROE based on its market-to-book approach. ECG's other suggestion proposed that we properly calculate the utilities' discount rate. We specifically declined ECG's market-to-book approach and also found the issue of utility discount rate beyond the scope of this proceeding. This market-to-book approach has been denied in past proceedings and ECG's current recommendation has not been bolstered by a substantial showing or by the support of recognized academic or industry experts. See, Re Pacific Gas and Electric Company, 46 CPUC2d (1992); Re Sierra Pacific Power Company, D.94-11-076. Therefore, we find that ECG's contribution to the proceedings is not significant to warrant compensation pursuant to the intervenor compensation statutes. Compensation is denied.

ETAG

ETAG argues that it made substantial contribution to D.96-11-062 based on its step-wise regression analysis developed to support its rate of return calculations. ETAG maintains that because its calculation of the ROE was closest to the rate eventually adopted, it made a substantial contribution. SCE and SoCalGas each contest this assertion.

SCE⁷ believes we should deny ETAG's request because it asserts that we failed to specifically state that we relied upon ETAG's calculation. Furthermore, SCE argues that ETAG is not a customer pursuant to PU Code § 1802(b) in that none of the principal owners take service from SCE. In this regard, SCE disputes ETAG's assertion that it played an integral role in developing the Joint Recommendation.

ETAG is incorrect in its characterization that we relied heavily upon its calculations in our final assessment of the 11.6% ROE as part of the settlement. We specifically noted the variances in the models of different parties and placed less weight on these calculations. (D.95-11-062, mimeo., p. 16.) We also noted ETAG's various recommendations concerning financial models and although some of these suggestions might have merit, we specifically left these suggestions open to the parties for their consideration. (Id.) We also noted that ETAG's methodology would have produced ROEs higher than the settling parties requiring ETAG to carry a difficult burden of proof justifying its position. (Id.) Finally, we note that at no point in our decision did we rely upon ETAG's methodology to justify the reasonableness of the ROE adopted. We find ETAG's contribution to this proceedings was not significant to warrant compensation based upon the intervenor compensation statutes. Therefore, compensation is denied.

⁷ SoCalGas' response is the equivalent of SCE's having been prepared by the same attorney and as such will not be repeated here.

Since it is our finding that both ECG and ETAG have not made a significant contribution to the above proceedings it is not necessary to examine the second prong of PU Code § 1803. We also need not discuss the financial hardship criteria for private consulting firms seeking compensation.

Findings of Fact

1. TURN, ECG and ETAG filed their requests for compensation in a timely manner consistent with the procedural requirements of PU Code § 1804 et seq.
2. TURN has made a substantial contribution to D.95-11-062 as set forth herein.
3. ECG has not made a substantial contribution to D.95-11-062 as set forth herein.
4. ETAG has not made a substantial contribution to D.95-11-062 as set forth herein.
5. TURN has demonstrated significant financial hardship as set forth herein.
6. The hours claimed by TURN for the participation of its advocates M. P. Florio, R. Finkelstein and T. P. Corr are reasonable.
7. TURN's hourly rate request for M. P. Florio, R. Finkelstein and T. P. Corr are reasonable.
8. The hours claimed by TURN for the participation of its expert witnesses W. B. Marcus, J. Nahigian and G. Ruzovan are reasonable.
9. TURN's hourly request for W. B. Marcus, J. Nahigian, and G. Ruzovan are reasonable.

10. TURN's request for \$347.24 in meals and lodging is unreasonable because TURN failed to make a sufficient showing warranting a change of our current policy.

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

12. TURN's request for \$712.50 in augmentation costs from Southern California Edison are reasonable.

13. ETAG's request for \$17,304.75 in connection with its work in D.95-06-052 is unreasonable.

Conclusions of Law

1. TURN should be granted \$33,745.04 for its contribution to this proceeding.

2. ECG and ETAG should be denied compensation in this proceeding.

3. ETAG's request for \$17,304.75 in connection with D.95-06-052 should be denied.

4. TURN should be awarded \$712.50 in augmentation costs from Southern California Edison.

O R D E R

IT IS ORDERED that:

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

2. Within 30 days of the effective date of this order Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Sierra Pacific Power Company (Sierra), and Southern California

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Gas Company (SoCalGas) shall each pay TURN their pro rata share of \$33,032.54 awarded to TURN plus interest at the rate earned by prime, three-month commercial paper as reported in the Federal Statistical Release, G.13 with interest beginning April 1, 1996 and continuing until full payment is made.

3. Within 30 days of the effective dated of this order SCE shall pay TURN \$712.50 awarded to TURN plus interest at the rate earned by prime, three month commercial paper as reported in the Federal Statistical Release, G.13 with interest beginning May 15, 1996 and continuing until full payment is made.

4. Application (A.) 95-05-016, A.95-05-017, A.95-05-021, A.95-05-022, and A.95-05-023 are closed.

This order is effective today.

Dated October 25, 1996, at Sacramento, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did not
participate.