

Decision 97-05-070 May 21, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the Southern California Edison Company (U 338-E) for Authority to Make the Following Changes to its Present Ratemaking for Its Share Of Palo Verde Nuclear Generating Station Unit Nos. 1, 2, and 3: (i) Accelerate Recovery of Company's Sunk Investment; (ii) Adopt Palo Verde Incremental Cost Incentive Pricing for its Incremental Costs; and (iii) Receive Related Substantive and Procedural Relief.

**ORIGINAL**

Application 96-02-056  
(Filed February 28, 1996)

**O P I N I O N**

The Utility Reform Network (TURN) requests an award of compensation in the amount of \$68,017.24 for its substantial contribution to Decision (D.) 96-12-083. That decision adopted an all-party settlement that proposed a ratemaking mechanism for the sunk costs and ongoing operating costs associated with Southern California Edison Company's (Edison) share of the Palo Verde Nuclear Generating Station (Palo Verde). TURN was found eligible for compensation in this proceeding by an Administrative Law Judge's (ALJ) Ruling dated May 21, 1996.

**I. Background**

TURN was one of three active parties in this proceeding. It sponsored testimony addressing Edison's proposal for recovery of Palo Verde-related sunk costs and the development of a Palo Verde Incremental Cost Incentive Pricing (ICIP) mechanism. It participated in the hearings conducted in August, 1996, and submitted opening and reply briefs in September. TURN, Edison, and the Office of Ratepayer Advocates (ORA) sponsored the all-party settlement that resolved the issues concerning sunk and incremental cost recovery for Palo Verde and that was adopted in D.96-12-083. The structure of the compromise adopted in the settlement was derived from one of the alternatives presented in TURN's testimony. (D.96-12-083, p.6.)

## **II. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(e) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that:

"'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. 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."

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with PU Code § 1806.

## **III. Timeliness and Eligibility**

TURN was found eligible for compensation in an earlier phase of this proceeding by an ALJ's Ruling dated May 21, 1996. Under Rule 76.76, a customer found eligible in one phase of a proceeding remains eligible in later phases of the same proceeding.

TURN filed its Request for an Award of Compensation on February 24, 1997, which satisfies the requirements of PU Code § 1804(c) that such requests be filed within 60 days following the issuance (mailing) of a final decision. D.96-12-083 is a final order resolving flexible pricing and associated ratemaking issues for which compensation is sought by TURN.

In view of the above, we find that TURN's request for compensation satisfies the eligibility and filing time requirements.

#### **IV. Contributions to Resolution of Issues**

In any proceeding, we must consider (1) if the intervenor has made a substantial contribution to the decision of the Commission, satisfying the requirements of PU Code § 1802, and (2) to what extent, if any, such contribution duplicated that of any other intervenor.

TURN has made a substantial contribution to the Commission's decision in this matter. TURN was one of three active parties in this proceeding. It sponsored extensive testimony addressing Edison's proposal for recovery of Palo Verde-related sunk costs and the development of a Palo Verde ICIP mechanism; participated very actively in the hearings conducted in late August, 1996, and submitted comprehensive opening and reply briefs in September. It joined with Edison and ORA in sponsoring the all-party settlement that was adopted without change in D.96-12-083. The Settlement Agreement resolved the issues concerning sunk and incremental cost recovery for Palo Verde during the transition period to a more competitive generation market. As noted in the decision, the structure of the compromise adopted in the settlement was based on a modification of one of the alternatives presented in TURN's testimony. (D.96-12-083, p. 6.)

TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. The intervenor compensation statutes allow the Commission to award full compensation even where a party's participation has overlapped in part the showings made by other parties. (PU Code § 1802.5.) TURN and ORA were the only active customer representatives in this proceeding, and both groups

took positions opposing Edison's proposed sunk cost recovery and ICIP mechanisms. As a result, there was bound to be some amount of overlap between the two parties. However, TURN emphasized different points than did ORA. On certain issues, it challenged Edison's position while ORA was silent (for example, recovery of Materials and Supplies (M&S) inventory in ICIP prices rather than through amortization as a sunk cost), whereas on other issues the positions were reversed. In short, TURN's involvement in this proceeding was unique, and only duplicated ORA's showing where such duplication was practically impossible to avoid. Therefore, we will not make any adjustment for duplication of other parties' showings.

**V. Itemization of Services and Expenditures**

**A. Summary**

The following is a summary of TURN's requested compensation.

**Attorney and Expert Witness Fees**

Robert Finkelstein					
178.0 hours	X	\$220	=	\$39,160.00	
Thomas Corr					
2.0 hours	X	\$225	=	\$450.00	
		Subtotal	=	\$39,610.00	

**Expert Witness Fees and Expenses**

**JBS ENERGY INC. (JBS)**

William Marcus					
116.5 hours	X	\$140	=	\$16,310.00	
Jeff Nahigian					
102.0 hours	X	\$80	=	\$8,160.00	
Greg Ruzovan					
15.3 hours	X	\$80	=	\$1,224.00	
Gayatri Schilberg					
1.75 hours	X	\$100	=	\$175.00	
JBS Expenses				\$469.50	
		JBS Subtotal	=	\$26,338.50	

**Other Reasonable Costs**

Photocopying expense	=	\$1,504.40
Postage costs	=	257.29
Fax charges	=	229.20

Phone expense	=	74.60
Attorney expense	=	3.25
Subtotal	=	\$2,068.74
TOTAL	=	\$68,017.24

**VI. The Hours Claimed for TURN's Attorneys Are Reasonable**

Finkelstein is TURN's staff attorney who bears primary responsibility for the organization's legal work on electric industry regulatory matters and, with the exception of attending the prehearing conference, handled every aspect of this proceeding on behalf of TURN. Finkelstein asserts that he has reviewed all of the recorded hours devoted to this proceeding and included only those that were reasonable for the underlying task. Certain activities (such as the preparation of TURN's response in support of ORA's Motion to Strike, filed June 28, 1996) have been excluded altogether. As a result, TURN submits that all of the hours sought are reasonable, and should be compensated in full.

In a proceeding of this magnitude and for a compensation request covering as many hours as does this one, the degree of TURN's contribution to this case warrants a full recovery for all reasonable hours devoted to the proceeding. The all-party settlement was comprehensive, so TURN should reasonably be viewed as having made a substantial contribution on every contested matter that it had addressed.

TURN also seeks compensation at the full hourly rate for the hours devoted to the preparation of this compensation request (totaling 10.0 hours). In recent compensation decisions, the Commission has in some cases granted full compensation for reasonable hours devoted to this task, whereas in others it has reduced the compensation for this work by cutting the hourly rate in half for the hours devoted to compensation matters. Where the hourly rate for compensation-related work has been reduced, the reason given for this adjustment was the perception that compensation requests "are essentially bills for services, and do not require a lawyer's skill to prepare."

TURN submits that the total hours devoted to compensation pleadings here is nearly the minimum amount of time that is required to prepare this pleading. While a person with a lower billing rate than TURN's attorney might have been able to prepare portions of this document, TURN believes that there would be no net savings to ratepayers, since it expects that the increase in the total hours devoted to the task would at least offset any cost reduction achieved through the lower rate. In accordance with our long-standing practice of awarding compensation for a reasonable amount of compensation-related hours at the full hourly rate of the attorney who performed the work, we will grant TURN's request.

**VII. The Hourly Rates Requested for TURN's Attorneys and Expert Witnesses Are Reasonable and Should Be Adopted**

**A. Robert Finkelstein**

TURN requests an hourly rate of \$220 for work performed by Staff Attorney Finkelstein in 1996. The Commission has very recently approved this rate for Finkelstein's work in 1996. (D.97-02-048 (Phase 2B of Edison's most recent general rate case (Application 93-12-025)).)

**B. Thomas Corr**

Corr is an attorney who has represented TURN before this Commission on a contract basis in a number of proceedings in the last two years. Corr appeared at the initial prehearing conference on April 16, 1996. TURN requests an hourly rate for Corr of \$225, an amount approved by this Commission in D.96-05-052 and D.96-10-072 for work performed by Corr on TURN's behalf in 1995.

**C. JBS Staff**

TURN seeks to recover the cost billed by JBS, the consulting firm that provided the expert witness services that enabled TURN to participate in this proceeding. The total sought for expert witness expenses represents a reasonable hourly rate applied for the work performed by various members of that firm, as well as a small amount of expenses JBS incurred during the course of its work on this proceeding.

William Marcus, principal economist for JBS, bore primary responsibility for the development and presentation of TURN's testimony in this proceeding, and assisted with preparation of the briefs on the issues covered in his testimony. Marcus delegated work to lower-priced associates at JBS whenever possible to minimize the total cost of service to TURN. Jeff Nahigian, associate economist, assisted Marcus with the drafting of testimony and the development of the data supporting that testimony. Greg Ruzovan, associate energy analyst, developed the model that allowed Marcus to present the benchmarking discussion issued in his testimony. Gayatri Schilberg, senior economist, reviewed and edited early drafts of TURN's testimony.

The hourly rates requested for TURN's expert witnesses reflect the actual "recorded or billed costs" that TURN incurred in retaining their services (PU Code § 1802(c)). The billing rates requested for each firm member (\$140 per hour for Marcus; \$80 per hour for Nahigian and Ruzovan; and \$100 per hour for Schilberg) are consistent with JBS' standard billing rates during the period when the work was performed.

TURN has made a sufficient showing of the reasonableness of the \$5.00 increase in the hourly rates of the JBS staff members who worked on this proceeding.

**D. Other Reasonable Costs**

The miscellaneous expenses listed in the summary presented above are reasonable in magnitude and were necessary for TURN's contribution to this case. The photocopying and postage costs relate exclusively to the preparation and distribution of TURN's pleadings and other documents and correspondence necessary for TURN's contributions to this case. The listed telephone and facsimile charges also exclusively reflect messages related to this proceeding. TURN's costs are all reasonable, and should be compensated in full.

**VIII. Award**

We award TURN \$68,107.24, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate),

commencing May 12, 1997 (the 75<sup>th</sup> day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Energy 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 applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

#### **Findings of Fact**

1. TURN is eligible for intervenor compensation and has made a timely request for compensation for its contribution to D.96-12-083.
2. TURN contributed substantially to D.96-12-083.
3. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.
4. TURN has provided sufficient showing to justify an increase in hourly rates for the work done in 1996 by its expert consultants.
5. The miscellaneous costs incurred by TURN are reasonable.

#### **Conclusions of Law**

1. TURN has fulfilled the requirements of PU Code §§ 1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$68,017.24 for its contribution to D.96-12-083.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

### **O R D E R**

#### **IT IS ORDERED that:**

1. The Utility Reform Network (TURN) is awarded \$68,017.24 in compensation for its substantial contribution to Decision 96-12-083.



2. Southern California Edison Company (Edison) shall pay TURN \$68,017.24 within 30 days of the effective date of this order. Edison 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, with interest, beginning May 12, 1997, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners