

OCT 15 1997

Decision 97-10-027 October 9, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Adjust its Electric Rates Effective November 1, 1989, and for Commission Order Finding that Gas and Electric Operations During the Reasonableness Review Period from February 1, 1988 to December 31, 1988 were Prudent.

Application 89-04-001
(Filed April 3, 1989)

And Related Matters.

Application 90-04-003
Application 91-04-003
Application 92-04-001
Application 93-04-011
Application 94-04-002
Application 95-04-002

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$18,274 in compensation for its contribution to Decision (D.) 96-08-033, D.96-12-027, D.96-12-089, and D.96-12-025.

1. Background

By D.96-08-033, we conditionally approved a joint stipulation (Stipulation) between Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates (ORA, formerly the Division of Ratepayer Advocates).¹ The Stipulation resolved many gas operations reasonableness issues in the above-captioned proceedings. Under the Stipulation, PG&E agreed to return to ratepayers \$67 million, including applicable interest charges, and ORA agreed to compromise certain gas

¹ The stipulation was entered into by the Division of Ratepayer Advocates, ORA's predecessor. This document uses the acronym ORA throughout.

reasonableness issues set forth in its testimony. The Stipulation was approved in D.96-08-033 subject to one condition. We required that PG&E return to ratepayers interest charges accrued from February 14, 1995, when the parties filed the motion to adopt the Stipulation, until the date refunds are returned or credited to customers. By D.96-12-027, we modified D.96-08-033 to add another condition to approval of the Stipulation. The second condition was that PG&E and ORA agree that the portion of the settled amount to be returned to retail electric customers would be credited to an electric deferred refund account established by separate order. By D.96-12-025 in our electric industry restructuring proceeding, we established the deferred refund account.² PG&E and ORA accepted the two conditions and by D.96-12-089, we approved the modified Stipulation.

TURN filed its request for an award of compensation on February 20, 1997. There were no responses or protests to TURN's request. On April 1, 1997, TURN filed supplemental information responding to the request of the Administrative Law Judge (ALJ) assigned to TURN's compensation filing.

2. 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(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the

² Rulemaking (R.) 94-04-031 and companion Investigation (I.) 94-04-032.

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 on 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 § 1806.

3. NOI to Claim Compensation

TURN was found eligible for compensation in earlier phases of the above-referenced dockets, and has been awarded compensation for contributions to decisions in those dockets. Under Rule 76.76, a customer found eligible in one phase of a proceeding remains eligible in later phases of the same proceeding. Consistent with the requirement of PU Code § 1804(c), TURN's request was filed within 60 days of the date of issuance (mailing date) of D.96-12-089.

4. Contributions to Resolution of Issues

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

TURN submits that its contribution to all four decisions referenced above (D.96-08-033, D.96-12-025, D.96-12-027, and D.96-12-089) was substantial. In particular, TURN argues that it was the only party to raise the issue of adding interest to the amount agreed to by the stipulating parties. TURN also argues that its participation in early discussions among parties and in settlement meetings substantially contributed to the Commission's decisions in specific ways. According to TURN, its initial negative response to PG&E's efforts to restructure its Canadian gas contracts influenced PG&E to pursue a different course which led to the Stipulation. TURN also argues that its work in settlement meetings resulted in the allocation specified in the Stipulation. In addition to these specific contributions to the settlement process, TURN believes that its good faith participation in the settlement efforts justifies an award of compensation for time and expenses spent in reviewing documents, attending meetings and hearings and communicating with other parties.

Although TURN opposed the Stipulation, we note that D.96-08-033 modified the proposed Stipulation to include additional interest directly in response to TURN's comments. (D.96-08-033, mimeo. p. 22.) We will award TURN full compensation for the hours devoted to this activity.

We agree with TURN that the comments it submitted jointly with El Paso substantially contributed to the record and enabled us to weigh the factors favoring adoption of the Stipulation against those favoring rejection. This contribution was particularly important where, as in this instance, the record was inadequate at the time the stipulation was submitted. (*Id.*, p. 4.) However, we believe that TURN's contribution should be discounted to reflect some duplication of effort, since its position was also advocated by SoCal and we do not discern any supplemental contributions of TURN on the issues addressed in joint testimony. We believe that a 10% reduction appropriately reflects our concerns over duplication of effort without discouraging TURN from pursuing collaborative filings in the future. This level of reduction is also consistent with our recent treatment of joint pleadings. (See D.96-11-040, mimeo., pp. 13-14.)

We will also reduce TURN's request for compensation related to settlement activities. In the past, when the level of duplication was difficult to ascertain, we have applied a duplication discount factor of 10% to 26% to the hours claimed by intervenors. For example, in D.88-12-085, we applied a duplication discount factor of 26% to the hours claimed for compensation where the Commission adopted a settlement. In D.91-12-055 and D.93-06-022, we applied duplication adjustments of 10%. More recently, we have applied a 10% duplication discount to requests for compensation that involve settlements. (See, for example, D.96-06-029, D.96-11-020, and D.96-11-040.) In this instance, TURN's positions regarding PG&E's Canadian gas contracts and the allocation of the refund were shared by others at the meetings, i.e., ORA and Sacramento Municipal Utility District, respectively. (See TURN's Request, pp. 4-5.) However, we also acknowledge that TURN participated actively throughout the settlement process. On balance, we believe that a 10% discount is reasonable in this case.

Finally, with respect to D.96-12-025, we agree that TURN substantially contributed through its comments and reply comments.³ TURN's comments and reply comments provided additional reasoning and support for the proposal the Commission offered, and ultimately adopted. We agree with TURN that its protest to Advice Letter 1973-G brought this issue to light and made a substantial contribution to ultimately addressing the refund issue.

As noted by TURN, D.96-12-025 was issued in the electric restructuring docket, R.94-04-031. However, we agree that it makes more sense to consider TURN's contributions on the refund issue together in one request, rather than attempting to allocate time by issue *and* proceeding, and demonstrating no double counting of hours.

³ We note that D.96-12-025 is subject to an application for rehearing filed by PG&E. Just the same, based on our re-interpretation of Rule 76.72, articulated today in a decision issued in A.94-12-004, we conclude that TURN's request is timely.

The number of hours spent on the refund issue in the restructuring docket is relatively small, so a separate request filed in that docket would not be administratively efficient.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$20,773 as follows:

Attorney Fees

Peter Allen

1.5 hours x \$170 = \$ 255

Michel Peter Florio

1992-'93 19.5 hours x \$210 = \$ 4,095

1993-'94 9.0 hours x \$235 = \$ 2,115

1994-'95 8.75 hours x \$250 = \$ 2,187.50

1995-'96 14.75 hours x \$260 = \$ 3,835

Theresa Mueller

1994-'95 3.0 hours x \$160 = \$ 480

1995-'96 39.75 hours x \$185 = \$ 7,353.75

Subtotal \$20,321.25

Other Reasonable Costs

Photocopying expense = \$ 299.20

Postage costs = \$ 143.64

Long Distance Telephone charges = \$ 5.30

Fax charges = \$ 4.00

Subtotal \$ 452.14

TOTAL \$ 20,773

5.1. Hours Claimed

In its request, TURN documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity, noting the attorney assigned to each activity. However, with the exception of identifying hours related to D.96-12-025, TURN did not identify hours or breakdown the costs by issue. At the request of the ALJ assigned to TURN's compensation filing, TURN provided a more

detailed breakdown of its claimed hours and related them to the following activities and issues:

- 12.75 hours spent on activities related to the issue of interest on the \$67 million agreed to by PG&E and ORA (Issue A).
- 35.5 hours spent on settlement efforts from 1992 through 1994, falling into two groups: 30 hours spent on the early settlement activities from late 1992 through mid-1994 and 5.5 hours spent on settlement activities after PG&E and ORA had reached agreement in principle (Issues B and B-1).
- 11.5 hours devoted to work on the joint comments submitted by TURN and El Paso Natural Gas Company (Issue C).
- 10 hours for TURN's contribution to establishing the ratemaking mechanism adopted in D.96-12-025.
- 11.75 hours devoted to unallocable tasks, such as review of settlement documents and proposed decisions and letters to the assigned ALJ.
- 14.75 hours preparing the compensation request.

With the duplication adjustments described above, we find TURN's claimed hours for all other activities to be reasonable, particularly in light of the duration of these proceedings.

5.2. Hourly Rates and Other Costs

TURN's requested hourly rates for Mr. Allen, Mr. Florio, and Ms. Mueller are rates previously approved by the Commission in D.93-04-048, D.94-04-017, D.94-05-052, D.95-04-050, D.95-05-003, D.96-06-020, and D.96-07-046. We therefore find them reasonable for the unallocable hours and hours allocated by issue. However, TURN's calculations reflect full attorney fees for preparation of its compensation request. As we have discussed in prior orders, we have held that compensation requests are essentially bills for services, and do not require a lawyer's skill to prepare.

Accordingly, we have reduced the attorney's rates for time spent preparing the compensation request, except in cases where the compensation claim involves technical and legal analysis deserving of compensation at higher rates. (See, for example, D.96-08-023, D.97-02-047, and D.97-02-048.) By D.97-02-019, we denied TURN's application for rehearing of this policy. We do not believe that TURN's compensation request in this proceeding is such a case. Accordingly, we authorize one-half of TURN's attorney fees for the 14.75 hours spent on the compensation request.

We find TURN's request for \$452.14 for ancillary expenses, which represents only 2% of TURN's total request, to be reasonable.

6. Award

We award TURN \$18,274 broken down by issue as indicated below. This award reflects the adjustments described in previous sections. A detailed spreadsheet of calculations is presented in Attachment 1. We note that TURN presented total hours of attorney time broken down by issue in its supplemental filing, but did not calculate the associated costs. In future compensation requests, TURN should clearly present requested compensation costs by issue. In TURN's case, this calculation required spreadsheet entries to reflect the differing compensation rates by attorney and fiscal year. (See Attachment 1.)

Attorney Fees

Issue A: Interest on \$67 million	\$ 2,554
Issues B/B-1: Settlement Discussions	\$ 6,853
Issue C: El Paso/TURN Joint Filings	\$ 2,100
Contribution to D.96-12-025	\$ 2,375
Preparation of Comp. Request	\$ 1,505
Unallocated Hours	<u>\$ 2,435</u>
Subtotal:	\$17,822

<u>Other Reasonable Costs</u>	452
TOTAL COMPENSATION:	\$18,274

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 6, 1997 (the 75th 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 Commission's 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 has made a timely request for compensation for its contribution to D.96-08-033, D.96-12-027, D.96-12-089, and D.96-12-025.
2. TURN contributed substantially to D.96-08-033, D.96-12-027, D.96-12-089, and D.96-12-025.
3. TURN's position on the Stipulation was also advocated by SoCal.
4. TURN's participation in settlement discussions was partially duplicated by the participation of other parties in those discussions.
5. It is reasonable to reduce TURN's request by 10% for those hours related to the joint comments filed with SoCal and with TURN's participation in settlement discussions.
6. TURN has requested hourly rates for attorneys that have previously been approved by the Commission.
7. TURN's requested attorney fees for preparation of its compensation request should be reduced by 50%, consistent with prior treatment of such costs.
8. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$18,274 for its contribution to D. 96-08-033, D.96-12-027, D.96-12-089, and D.96-12-025.
3. Because there are no outstanding issues in this proceeding, it should be closed.
4. 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 \$18,274 in compensation for its substantial contribution to Decision (D.) 96-08-033, D.96-12-027, D.96-12-089, and D.96-12-025.
2. Pacific Gas and Electric Company (PG&E) shall pay TURN \$18,274 within 30 days of the effective date of this order. PG&E 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 6, 1997 and continuing until full payment is made.
3. Application (A.) 89-04-001, A.90-04-003, A.91-04-003, A.92-04-001, A.93-04-011, A.94-04-002, and A.95-04-002 are closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I will file a written dissent.

/s/ HENDRY M. DUQUE
Commissioner

ATTACHMENT 1

CALCULATION OF COMPENSATION AWARD

ISSUE A--Interest on \$67 million

Attorney	Date	Hours	Rate	hrsxrate	Authorized
MF	5/16/95	3	250	750	
TM	8/10/95	0.25	185	46.25	
TM	8/20/95	2	185	370	
TM	22-Aug	0.5	185	92.5	
TM	7/27/96	2	185	370	
TM	7/29/96	5	185	925	
	Subtotal	9.75		1803.75	
	Total:	12.75		2553.75	1 2553.75

ISSUE B--Participation in Early Settlement Discussions

MF	11/2/92	2	210	420	
	12/18/92	2.25	210	472.5	
	3/16/93	0.25	210	52.5	
	4/5/93	0.25	210	52.5	
	4/21/93	0.5	210	105	
	4/23/93	1	210	210	
	5/18/93	1.5	210	315	
	5/20/93	1.5	210	315	
	5/21/93	2	210	420	
	5/25/93	0.5	210	105	
	5/28/93	0.5	210	105	
	6/4/93	2	210	420	
	6/4/93	0.25	210	52.5	
	6/14/93	1.5	210	315	
	6/17/93	1	210	210	
	6/21/93	0.5	210	105	
	6/29/93	2	210	420	
	7/13/93	0.25	235	58.75	
	7/15/93	1.25	235	293.75	
	7/27/93	3.25	235	763.75	
	10/21/93	0.5	235	117.5	
	12/8/93	0.25	235	58.75	
	2/10/94	0.5	235	117.5	
	3/7/94	1	235	235	
	3/8/94	0.5	235	117.5	
	3/10/94	1.25	235	293.75	
	5/16/94	0.25	235	58.75	
	Subtotal:	28.5		6210	
PA		0.25			
PA		0.25			
PA		1			
	Subtotal:	1.5	170	255	
	TOTAL:	30		6465	0.9 5818.5

ISSUE B-1: Later Settlement Discussions

A.89-04-001 et al. COM/PGC/tcg

MF	8/23/94	0.25	250	62.5		
	9/22/94	0.25	250	62.5		
	10/25/94	2.5	250	625		
	Subtotal:	3		750		
TM	10/25/94	2.5	160	400		
	Total:	5.5		1150	0.9	1035

ISSUE C: El Paso/TURN Joint Position

MF	8/14/95	0.25	260	65		
	8/20/95	1.5	260	390		
	8/22/95	0.5	260	130		
	1/16/96	0.5	260	130		
	Subtotal:	2.75		715		
TM	8/8/95	0.25	185			
	8/18/95	1	185			
	8/21/95	4	185			
	9/15/95	0.25	185			
	9/19/95	0.75	185			
	9/21/95	0.25	185			
	10/20/95	0.25	185			
	10/23/95	0.25	185			
	1/10/96	0.25	185			
	1/16/96	1.5	185			
	Subtotal:	8.75		1618.75		
	TOTAL:	11.5		2333.75	0.9	2100.375

CONTRIBUTION TO D.96-12-025

MF	10/3/96	1				
	10/22/96	0.25				
	10/23/96	0.25				
	10/30/96	2.5				
	10/31/96	3				
	Subtotal:	7	260	1820		
TM	10/24/96	2				
	10/31/96	1				
	Subtotal:	3	185	555		
	TOTAL:	10		2375	1	2375

Preparation of Comp Request:

MF	2/12/97	3	260	780		
		0.75	260	195		
TM		4	185	740		
		7	185	1295		
	Total:	14.75		3010	0.5	1505

UNALLOCATED HOURS

MF					
	3/14/95	2.5	250	625	
	3/15/95	0.25	250	62.5	
	8/28/95	0.5	260	130	
	2/12/96	0.25	260	65	
	7/5/96	0.25	260	65	
	7/8/96	0.25	260	65	
	Subtotal:	4		1012.5	
TM					
	5/16/95	0.5	160	80	
	8/4/95	0.25	185	46.25	
	8/10/95	0.25	185	46.25	
	8/25/95	0.5	185	92.5	
	8/28/95	1.5	185	277.5	
	8/28/95	0.25	185	46.25	
	8/29/95	2	185	370	
	8/29/95	1.5	185	277.5	
	7/5/96	1	185	185	
	Subtotal:	7.75		1421.25	
	TOTAL:	11.75		2433.75	1 2433.75
REQUEST					
TOTAL:	96.25		20321.25		AUTHORIZED TOTAL 17821.38
Misc. Exp			452.14		452.14
TOTAL WITH MISC. EXP.:			20773.39		18273.52

(END OF ATTACHMENT 1)

COMMISSIONER HENRY M. DUQUE, DISSENTING:

Let me start by stating that I believe that intervenors are a crucial part of the Commission's deliberative process and it pains me to feel compelled to vote this way. The root of the problem is that this Commission has not acted rapidly to resolve applications for rehearing. If we had acted on these rehearing requests, we wouldn't have been required to choose between the draft orders and the alternates. As it is, by adopting the alternates, we are in a position of approving compensation based on a substantial contribution showing that may change as a result of the decision on rehearing. In the past we have not been consistent about awarding compensation related to issues subject to rehearing. The alternates adopted today do not attack the root of the problem, our slow deliberation on rehearing matters, and in fact, they might provide parties with less incentive to push us to resolve these matters expeditiously.

These orders point out how crucial it is that we revisit the definition of substantial contribution in our intervenor compensation OIR. Under our current definition of substantial contribution, whether a party "wins" or "loses" on an issue seems to drive whether their contribution is considered substantial. Because of this definition, the resolution of rehearing requests may significantly affect what is considered eligible for compensation. However, it is my personal opinion that even if a party does not "win" on a given issue, their participation often contributes significantly to narrowing the range of debate and clarifying the issues. Under a different standard for substantial contribution, TURN's request in this case might not revolve on whether this Commission was timely in resolving rehearing requests.

Let me make it clear that based on the current standard, I felt that I could not support the award of compensation at this time, only because the Commission had not reached a final decision. I am eagerly looking forward to the draft order in the intervenor compensation OIR so that we may develop and explore other potential definitions of substantial compensation.

/s/ Henry M. Duque

HENRY . DUQUE

Commissioner

San Francisco, California
October 9, 1997

A.89-04-001, et al
D.97-10-027

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Commissioner

San Francisco, California
October 9, 1997