

Decision 97-12-076 December 16, 1997

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

In the Matter of the Application of Southern California Gas Company (U 940-G) for Authority Revise its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding.

**ORIGINAL**  
Application 96-03-031  
(Filed March 15, 1996)

In the Matter of the Application of San Diego Gas & Electric Company (U 902-G) for Authority to Revise its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding.

Application 96-04-030  
(Filed April 15, 1996)

**OPINION**

**Summary**

In this decision we award intervenor compensation in the amount of \$174,267.20 to The Utility Reform Network (TURN) for its contribution to Decision (D.) 97-04-082.

**1. Background**

On March 15, 1996, Southern California Gas Company (SoCalGas) filed its Biennial Cost Application Proceeding (BCAP) Application (A.) 96-03-031 for a \$137.7 million annual rate decrease. On April 15, 1996, San Diego Gas & Electric Company (SDG&E) filed its BCAP application, A.96-03-030 for a \$42 million rate decrease. SDG&E requested that its application be consolidated with SoCalGas' application.

A prehearing conference was held on April 26, 1996 for both applications. The proceedings were consolidated and hearings set. Hearings were held in San Francisco from August 1-29, 1996 on SoCalGas' application and from September 3-5, 1996 on SDG&E's application. Opening briefs were filed September 27 and October 11, 1996 for SoCalGas and SDG&E respectively. Reply briefs were filed October 15 and October 22, 1996. The consolidated case was submitted on October 22, 1996.

SoCalGas and SDG&E filed updates to their BCAP requests on October 15 and October 25, 1996 respectively. These filings raised the issue of adequate notice. On November 8, 1996 the administrative law judge (ALJ) set a procedural schedule for dealing with the issue.

On January 22, 1997 the ALJ's proposed decision was mailed to all parties for comments pursuant to Rules 77.2-77.5 of the Commission's Rules of Practice and Procedure. On March 26, 1997 an alternate order of Commissioner Knight was mailed to all parties for comments as well. D.97-04-082 issued April 23, 1997.

On June 4, 1997 TURN and the City of Long Beach filed petitions for rehearing of D.97-04-082. Such filings do not prohibit us from awarding intervenor compensation in this proceeding at this time. (D.97-10-026, Ordering Paragraph (OP) 2.)

## **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 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 § 1806.

On July 7, 1997, TURN filed its request for compensation for its contributions to D.97-04-082.<sup>1</sup> On August 5, 1997, the California Industrial Group and the California Manufacturers Association (CIG/CMA) filed a response to the request.<sup>2</sup> On August 6, 1997, SoCalGas filed a response to the request.<sup>3</sup> TURN replied to these responses on August 21, 1997.<sup>4</sup>

### **3. NOI to Claim Compensation**

TURN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by an ALJ ruling dated July 1, 1996. The same ruling found that TURN had demonstrated significant financial hardship.

### **4. Contributions to Resolutions of Issues**

In its request for compensation, TURN describes its contributions as follows:

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<sup>1</sup> Request for Award of Compensation, TURN, July 7, 1997.

<sup>2</sup> Response of CIG/CMA to TURN Request for Award of Compensation, CIG/CMA, August 5, 1997.

<sup>3</sup> Response of SoCalGas (U 904 G) to TURN Request for Compensation, SoCalGas, August 6, 1997.

<sup>4</sup> Reply to Responses to TURN's Request for Award of Compensation, TURN, August 21, 1997.

a. TURN's request

- Marginal Cost Methodology and Cost Allocation

In this area of the case, TURN proposed adoption of two modifications to SoCalGas' marginal cost methodology, consistent with the Commission's decision in Pacific Gas and Electric Company's (PG&E) BCAP, D.95-12-053. TURN proposed the customer hook-up or new customer only (NCO) method of calculating marginal customer costs, the method already used by the Commission for PG&E and Southern California Edison Company (Edison). Although the Commission did not adopt this method here due to the Global Settlement, it did note that NCO is preferable to the rental method. In addition, the Commission used the NCO method for purposes other than inter-class cost allocation, as proposed by TURN.<sup>5</sup>

TURN also supported ORA's proposal for a replacement cost adder in the marginal costs of transmission, distribution, and storage. TURN proposed a different method of calculating replacement costs, which was adopted by the Proposed Decision (PD). D.97-04-082 found that the replacement cost adder could not be adopted due to the Global Settlement and deferred the issue to the gas strategy proceeding for more study. Consistent with the arguments of TURN and the Office of Ratepayer Advocates (ORA), the decision found that including replacement costs was not an embedded cost methodology.

Also in the area of marginal costs and cost allocation, the Commission rejected SoCalGas' proposal for a replacement cost multiplier which was opposed by TURN and ORA. In addition, the Commission adopted but did not need to implement the TURN proposal for rate caps to mitigate adverse rate impacts on noncore customers.

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<sup>5</sup> The implementation of NCO ordered by D.97-04-082 is not exactly what TURN proposed. This issue is currently before the Commission through Petitions for Modification of D.97-04-082.

- **Core Rate Design Issues**

Consistent with the arguments of ORA, the Save Our Services Coalition (SOS), and TURN, the Commission rejected SoCalGas' rate design proposals, including: an increased residential customer charge; reduction in baseline allowances beyond what is necessary to comply with the statute; full deaveraging of core rates; and narrowing of tier differential. The decision also found that the tier differential should be calculated on a composite basis, as argued by TURN. The Commission also ordered further study of issues related to core rate deaveraging, as proposed by TURN.

- **CARE-Related Issues**

Consistent with the arguments of TURN, ORA, and SOS, the Commission rejected SoCalGas' proposals to modify CARE benefits and the allocation of CARE costs. The Commission adopted TURN's proposal to amortize the CARE undercollection over the entire BCAP cycle in order to reduce the rate impact. In addition, the PD adopted TURN's recommendation that SoCalGas be ordered to stop displaying the CARE surcharge separately on customer bills.

- **Resource Planning Issues**

The decision adopted TURN's recommendation to accept SoCalGas' core peak day reliability standard for now, but require SoCalGas to present further evidence regarding the cost and cost allocation impacts of alternative scenarios.

- **Storage-Related Issues**

TURN was one of several parties who identified the cost allocation problem created by SoCalGas' marketing of expansion capacity. D.97-04-082 adopted TURN's recommendation that revenues from storage withdrawal contracts be allocated to the Storage Transition Cost account until all pre-1992 storage is sold. Consistent with TURN's recommendation, the decision also required SoCalGas to take remedial action to correct excess costs allocated to ratepayers.

TURN also provided arguments in support of several ORA proposals on storage which were adopted by the Commission. TURN's analysis also demonstrated that SoCalGas was understating the amount of flowing supply available to the core, in order

to charge the core for more reserved capacity. Although the Commission ultimately adopted ORA's number and not TURN's, the analysis provided in TURN's testimony is relied on by the decision. The decision also orders SoCalGas to present new information on the cost-effectiveness of its storage policies, consistent with TURN's testimony.

- **Transmission and Zone Rate Credit Issues**

The Commission adopted TURN's proposals to: treat ARCO pipeline lease costs as part of transmission operations and maintenance (O&M); reject the CIG/CMA proposal to change the marginal demand measure for marginal transmission costs; reject the Southern California Utility Power Pool and Imperial Irrigation District (SCUPP/IID) proposal to eliminate transmission compressor fuel as a component of marginal cost; approve the future ratemaking treatment of the zone rate credit eligibility limitation, but direct SoCalGas to explain how past savings from the restriction will be returned to ratepayers. In addition, the PD adopted TURN's recommendation that SoCalGas be required to track increased costs to ratepayers from minimum supply requirements at Blythe.

- **Other Customer Cost Issues**

SoCalGas agreed to change its proposal in two ways in response to issues raised by TURN: SoCalGas agreed to revise the single-family service line investment cost to reflect the new line extension rules; as a result of discovery by TURN, SoCalGas adjusted its allocation of meter-reading expenses to reflect the results of its most recent study. In addition, the Commission directed SoCalGas to include the O&M costs associated with exclusive use facilities as part of marginal customer variable costs in a future showing, as proposed by TURN.

- **Interstate Pipeline Capacity Issues**

Although neither the Commission nor the PD adopted TURN's primary proposal to charge core customers the market price for the capacity reserved for them and eliminate the 10% cap on core ITCS, both noted that this proposal was consistent with the Commission's policy objectives. The issue was deferred to the gas strategy proceeding for further study. The PD resolved the core reservation and surcharge issues in a manner similar to the ORA proposal, which TURN supported as an alternative to its primary proposal.

- **Miscellaneous Issues**

Consistent with TURN's recommendation, the decision directed SoCal to continue recording California producer exchange volumes at the previous contract rate, even if the volumes subsequently move as regular noncore transport. The decision adopted the proposal of the California Cogeneration Council and Watson Cogeneration Company, which TURN supported, to require SoCalGas to file by advice letter special contracts between SoCalGas and utility electric generation customers.

- b. **Responses by CIG/CMA and SoCalGas**

On August 5, 1997, the response of CIG/CMA to TURN's request for compensation was filed. The response was in opposition to TURN's request. CIG/CMA makes the following points:

- The Commission rejected TURN's positions on the major issues which were:
  - Replacement cost adder,
  - NCO method for marginal customer costs,
  - Core reservation,
  - 10% core cap on ITCS, and
  - ITCS capacity stepdown and surcharge issues.

- TURN's positions on four of the five major issues were precluded by the Global Settlement or inconsistent with policies adopted in previous Commission decisions.

- TURN's positions on storage issues were adopted only in part and were duplicative of positions taken by ORA and other parties.

- TURN's positions on the issues of residential rate design and CARE were generally adopted by the Commission but these were relatively lesser issues and TURN's positions duplicated those of ORA and other parties.

- The hours claimed, 839, exceed the 500 hours originally estimated by TURN.

On August 6, 1997 SoCalGas filed its response to TURN's request for compensation. SoCalGas recommends that TURN not be granted its full request. SoCalGas makes roughly the same points as CIG/CMA on the major issues.

**c. Reply of TURN**

In its August 21, 1997 reply to the CIG/CMA and SoCalGas responses, TURN makes the following points:

- Intervenors need not be successful in all issues in order to receive full compensation.
- CIG/CMA misrepresents the amount of time TURN spent on the various issues.
- SoCalGas' motions to preclude TURN's proposals regarding marginal cost methodology were denied.
- TURN addressed the pipeline demand charges and related issues because they were deferred to the proceeding.
- TURN's positions and analyses of issues were in some cases similar to, but not duplicative of other parties.

**d. Discussion**

We agree with TURN's characterization of its contributions. We find that while some of TURN's positions were the same or similar to other parties, they were



complementary rather than duplicative. Additionally, although we did not adopt all of TURN's positions, we find that TURN made a substantial contribution overall.

**5. The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$178,969.00 as follows:

Attorney and Expert Witness Fees

<b>Michel Peter Florio</b>					
38.75	hours	x	\$260	=	\$ 10,075.00
170.25	hours	x	\$275	=	\$ 46,818.75
<b>Theresa Mueller</b>					
47.25	hours	x	\$185	=	\$ 8,741.25
455.00	hours	x	\$200	=	\$ 91,000.00
			<u>Subtotal</u>	=	<u>\$156,635.00</u>

Experts at JBS Energy, Inc.

<b>William Marcus</b>					
68.25	hours	x	\$140	=	\$ 9,555.00
<b>Greg Ruzovan</b>					
58.75	hours	x	\$ 80	=	\$ 4,700.00
<b>Gayatri Schilberg</b>					
.75	hours	x	\$100	=	\$ 75.00
			<u>Subtotal</u>	=	<u>\$ 14,330.00</u>

**Other Reasonable Costs**

Photocopying expense	=	\$ 6,093.20
Postage costs	=	\$ 939.93
Federal Express charges	=	\$ 60.75
Long Distance Telephone charges	=	\$ 125.97
Fax charges	=	\$ 513.60
JBS Costs (travel, fax, Fed Ex.)	=	\$ 271.25
<u>Subtotal</u>	=	<u>\$ 8,004.70</u>

**TOTAL** = \$ 178,969.00

### **5.1 Hours Claimed**

TURN documented the claimed hours spent by its attorneys by presenting a daily breakdown of the hours for each attorney along with a brief description of each activity. For its consultant, TURN presented a breakdown by issue with base and common time broken out separately. The hourly breakdown presented by TURN reasonably supports its claim for total hours.

CIG/CMA, in its response, correctly points out that TURN's requested hours exceed its initial estimate. (See 4.b above.) However, while the estimate is important, it is not a cap. Given the duration of this proceeding as well as the number and complexity of the issues TURN addressed, we believe the number of hours is reasonable.

### **5.2 Hourly Rates**

TURN requests an hourly rate for Mr. Florio of \$260 for fiscal year 1995-1996. The rate for fiscal year 1995-1996 was adopted by D.96-06-020, pp. 2-3. For fiscal year 1996-1997 TURN requests a rate of \$275 for Mr. Florio. TURN presented an Of Counsel 1996 Annual Survey of the Nation's Leading Law Firms as well as declarations of experienced attorney practitioners in support of its request.

TURN requests an hourly rate for Ms. Mueller of \$185 for fiscal year 1995-1996. The \$185 rate for fiscal year 1995-1996 was previously approved by D.96-07-046, pp. 9-10. For fiscal year 1996-1997 TURN requests an hourly rate of \$200. This is supported by the Of Counsel 1996 survey.

The billing rates requested by TURN for JBS Energy, Inc. were adopted in D.97-05-070.

In its August 5, 1997 response, CIG/CMA says that the requested attorney fees are too high because TURN's attorneys are not in private practice and do not incur comparable overhead costs. CIG/CMA also says that Ms. Mueller's experience does not warrant a rate higher than \$150 per hour based on her experience. In addition, CIG/CMA recommends that TURN not be reimbursed for the hours spent preparing

the request for compensation because attorneys in private practice do not normally charge for bill preparation.

TURN in its August 21, 1997 response represents that CIG/CMA's claims regarding attorney hourly rates are unsupported. TURN believes it has fully supported its request.

We will adopt the billing rates proposed by TURN with the exception that for fiscal year 1996-1997 we will adopt a rate of \$195 for Ms. Mueller which is roughly proportional to the increase granted for Mr. Florio. CIG/CMA's arguments do not convince us to substantially deviate from our past practice with respect to rates used for these individuals.

As to CIG/CMA's objection to preparation of the compensation request, we will follow past practice and grant compensation. However, it will be at one half of the hourly rate since compensation requests are essentially bills for services and should only require some assistance by an attorney to prepare.

### ***5.3 Other Costs***

TURN requests \$8,004.70 for other costs such as photocopying, postage, phone calls, etc. These appear to have been directly related to this proceeding and are not excessive. We conclude that they are reasonable.

**6. Award**

We award TURN \$174,267.20, calculated as follows:

Attorney and Expert Witness Fees

Michel Peter Florio

38.75	hours	x	\$260	= \$	10,075.00
167.75	hours	x	\$275	= \$	46,131.25
2.50	hours	x	\$275 x 0.5	= \$	343.75

Theresa Mueller

44.75	hours	x	\$185	= \$	8,278.75
2.5	hours	x	\$185 x 0.5	= \$	231.25
436.0	hours	x	\$195	= \$	85,020.00
19.0	hours	x	\$195 x 0.5	= \$	1,852.50

Subtotal = \$151,932.50

Experts at JBS Energy, Inc.

William Marcus

68.25	hours	x	\$140	= \$	9,555.00
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Greg Ruzovan

58.75	hours	x	\$ 80	= \$	4,700.00
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Gayatri Schilberg

.75	hours	x	\$100	= \$	75.00
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Subtotal = \$ 14,330.00

Other Reasonable Costs

Photocopying expense = \$ 6,093.20

Postage costs = \$ 939.93

Federal Express charges = \$ 60.75

Long Distance Telephone charges = \$ 125.97

Fax charges = \$ 513.60

JBS Costs (travel, fax, Fed Ex.) = \$ 271.25

Subtotal = \$ 8,004.70

**TOTAL = \$ 174,267.20**

We will assess responsibility for payment to SoCalGas since TURN did no significant work regarding SDG&E.

Prior to our reinterpretation of Rule of Practice and Procedure 76.72, TURN's request for compensation would have been rejected without prejudice or held until the

petitions for rehearing had been resolved. However, since we have reinterpreted Rule 76.72, the petitions for modification no longer prevent our deciding on TURN's request for compensation. Since D.97-10-026 was issued on October 9, 1997, we will treat TURN's request as if it was filed on that date.

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 December 24, 1997 (the 75th day after D.97-10-026 was issued) and continuing until the utility makes full payment of the 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 was found eligible to request compensation in this proceeding by ALJ ruling dated July 1, 1996.
2. In OP 2 of D.97-10-026 we ordered that Rule of Practice and Procedure 76.72 shall be read to allow an intervenor to file a request for compensation after a final order or decision has been made in a case on which the intervenor believes it has made a substantial contribution, regardless of the pendency of an application for rehearing.
3. TURN's request for compensation for its contribution to D 97-04-082 will be treated as if it was filed on October 9, 1997.
4. TURN contributed substantially to D.97-04-082.
5. The hourly rates requested for Mr. Florio and JBS Energy, Inc. are no greater than the market rates for individuals with comparable qualifications.
6. A \$10 per hour increase to \$195 for Ms. Mueller for fiscal year 1996-1997 over the previously approved rate for fiscal year 1995-1996 is roughly proportional to the

increase granted for Mr. Florio and is therefore reasonable and no greater than comparable market rates.

7. The miscellaneous costs incurred by TURN are reasonable.
8. TURN and the City of Long Beach filed for rehearing of D.97-04-082 on June 4, 1997.
9. TURN's requested attorney fees for preparation of its compensation request should be reduced by 50% consistent with prior treatments of such costs.

#### **Conclusions of Law**

1. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$174,267.20 for its contribution to D.97-04-082.
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 \$174,267.20 in compensation for its substantial contribution to Decision 97-04-082.
2. Southern California Gas Company (SoCalGas) shall pay TURN \$174,267.20, within 30 days of the effective date of this order. SoCalGas shall also pay interest at the

A.96-03-031, A.96-04-030 ALJ/JPO/jac

rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning December 24, 1997 and continuing until full payment is made.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners