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ALJ/BDP/sid *

Decision 98-02-010 February 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion to Consider the Line Extension Rules of
Electric and Gas Utilities.

Rulemaking 92-03-050
(Filed March 31, 1992)

ORIGINAL

OPINION AWARDING COMPENSATION

1. Summary

The Utility Reform Network (TURN) and Utility Consumers' Action Network (UCAN) are awarded compensation of \$72,638.54 for their substantial contribution to Decision (D.) 94-12-026, D.95-12-013 and D.96-06-031. These decisions address gas and electric utility line extension issues in this rulemaking proceeding.¹

2. Background

Order Instituting Rulemaking (R.) 92-03-050 was issued on March 31, 1992 to consider the line extension rules of gas and electric utilities and uncover opportunities to consolidate, simplify, and standardize the extension rules, reduce the administrative costs of the rules, and more appropriately assign extension costs.

As directed by the Commission, the parties relied on alternatives to litigation to a very significant degree. This approach achieved mixed results. The parties found that while it was easier to delve into detailed operational issues in a workshop setting, it was

¹ D.94-12-026 modernizes the gas and electric line extension rules by providing for revenue-based allowances.

D.95-12-013 establishes a 24-month pilot program to test feasibility of applicants designing distribution facilities for their projects.

D.96-06-031 specifies the remaining issues to be addressed in this proceeding.

difficult to resolve major questions of policy in those forums. This may explain in large part the duration of this proceeding.

In their request for compensation, TURN and UCAN have at some length set forth the history of this proceeding through the issuance of D.94-12-026, D.95-12-013 and D.96-06-031. We need not repeat the details. However, as it turned out, review and revisions of the line extension rules was far more time-consuming than most parties thought at the outset. The process leading up to the issuance of D.94-12-026, a milestone decision in this proceeding, was well-described in that decision:

“Extensive workshops were held in 1992 and 1993, during which the parties discussed numerous ideas on how both gas and electric line extension rules should be revised. The workshops involved the exchange of data as well as lengthy and productive discussions among the parties regarding their respective positions and concerns.” (D.94-12-026, p. 3.)

TURN and UCAN were active participants in those workshops, representing the interests of residential and small commercial consumers.

3. Eligibility, Timeliness of Request and Significant Financial Hardship

To be eligible for compensation, intervenors must satisfy the requirements of Public Utilities (PU) Code §§ 1801-1812. TURN and UCAN were found eligible for compensation in this proceeding by an Administrative Law Judge (ALJ) ruling dated January 27, 1995. Also, it was determined that TURN and UCAN had made an adequate showing of financial hardship.

Consistent with the requirement of § 1804(c), the request for compensation was filed within 60 days of the date of issuance (mailing) of D.96-06-031, which was June 7, 1996. We agree that TURN and UCAN have satisfied the requirements of § 1801 et seq. covering eligibility, timeliness and significant financial hardship.

4. Final Order or Decision

Sections 1804(c) and (e) require that the Commission determine whether the customer has made a substantial contribution to the “final order or decision in the hearing or proceeding.” In D.94-12-026, the Commission adopted a settlement that TURN and UCAN sponsored along with the utilities and the Office of Ratepayer

Advocates (ORA). Applications for Rehearing of that decision, filed by the California Building Industry Association (CBIA), the Bay Area Rapid Transit District (BART), and the Western Mobilehome Parkowners Association (WMA), challenged the legal and factual basis for that decision in regard to the most critical points addressed in the settlement. Therefore, in a letter dated January 24, 1995, TURN and UCAN notified the assigned ALJ that pursuant to Rule 76.72, they intended to postpone seeking an award of compensation until the pending applications are resolved. The Commission has yet to rule on the various Applications for Rehearing. Based on the amount of time that has passed since the Applications for Rehearing were filed and since some of the hours for which compensation is requested date back to 1992, TURN and UCAN submit that D.96-06-031, which was issued on June 7, 1996, should reasonably be construed as finally resolving the line extension issues for which compensation is sought in this request.

We agree that TURN and UCAN should not have to wait any longer for compensation. We recently stated:

"With respect to our intervenor compensation program, our overarching goal has always been to encourage efficient and effective participation by intervenors. As directed in § 1801.3(e), we intend that:

"Intervenor compensation be awarded to eligible intervenors in a timely manner within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.

"In the past when we have applied Rule 76.72, we have applied that part of the rule that clarifies that the decision need not close the proceeding for a request for compensation and an award to be timely." (D.97-10-026, p. 4).

Notwithstanding that this is an ongoing proceeding, we conclude that D.96-06-031 should be considered a "final decision" and an appropriate milestone for purposes of awarding compensation.

5. Substantial Contribution

Pursuant to § 1803(a), the Commission must determine whether TURN and UCAN made a substantial contribution to D.94-12-026 et al. Section 1802(h) defines "substantial contribution" as follows:

"'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."

As discussed above, this proceeding comprised a series of workshops followed by workshop reports and prehearing conferences punctuated by short evidentiary hearings and briefs. The crown jewel of this effort is the Settlement Agreement attached to D.94-12-026 (Appendix B).

The Settlement Agreement addresses important changes to the line extension rules that made those rules significantly better from the perspective of the general body of current customers of the California energy utilities. The most substantial change is the shift to revenue-based allowances, which had the impact of reducing the amount of line extension allowances and, consequently, the costs borne in the rates of existing customers. (D.94-12-026 as Appendix B, p. 89.) While the rate reduction impact will be relatively modest at first, it will compound over time due to the ongoing reduction in rate base for each utility.

One of the more critical issues for small consumers was the agreement among the parties that certain issues would be considered in the near future. While a promise to address issues in the near future may not on its face seem like much of an accomplishment, it needs to be considered in context. As it became clear that the extensive modifications to the line extension rules would not be as easily achieved as

might have been assumed when R.92-03-050 issued, there was a real threat of making relatively middling changes, declaring victory, then closing the proceeding, to short-circuit further revisions to the utilities' line extension rules. TURN and UCAN were instrumental in not allowing this to happen.

In summary, we agree with TURN and UCAN that their contributions to the Commission's decisions in this proceeding appear in three forms: Achieving modifications to the line extension allowances that deliver ratepayer benefits; monitoring the resolution of issues such as applicant design to ensure that the resolution is not achieved in a way that would work to the detriment of ratepayers; and ensuring that there would continue to be opportunities to pursue further modifications to the line extension rules that would deliver greater benefits to ratepayers. TURN and UCAN were successful on each of these points. Therefore, we find that TURN and UCAN made a substantial contribution throughout the course of this rulemaking to D.94-12-026, et al.

6. Duplications of Effort

TURN and UCAN assert that their compensation in this proceeding should not be reduced for duplication of the showings of other parties. They argue that the intervenor compensation statutes allow the Commission to award full compensation even where a party's participation has overlapped in part with the showings made by other parties. (Section 1802.5.)

TURN and UCAN submit that there was little overlap of effort in this proceeding. TURN and UCAN were the only active parties whose sole purpose in the proceeding was advocacy on behalf of residential and small consumer interests. At many times, TURN and UCAN's representative was the only consumer representative in the workshops and other various meetings that occurred in this rulemaking. Over the last four years, there have been a number of periods during which ORA was unable to be present at workshops or to otherwise participate in the proceeding. In light of this fact, TURN and UCAN submit that the Commission should find that for the most part there simply was not substantial duplication of efforts.

On those issues where some overlap existed, TURN and UCAN assert that they materially supplemented, complemented or contributed to the presentation of another party. In a proceeding that relies on the workshop and other alternatives to litigation forums as heavily as this one does, almost every party is going to find itself taking a position shared by another party at some point in the process. According to TURN and UCAN, they often find themselves aligned with the utility parties on certain issues, and with other public interest groups such as the Natural Resources Defense Council and the Coalition for Urban Concerns on others. Whenever such alignment occurred, TURN and UCAN focused on those aspects of the issue that were the most meaningful from the perspective of residential and small commercial consumers.

We conclude that there was no duplication of effort that would warrant any reduction in an award of compensation.

7. Itemization of Services and Expenditures

TURN and UCAN's request for compensation is summarized below. A more detailed breakdown is provided in the request for compensation.²

Attorney Fees

Robert Finkelstein (TURN)

8.75 hours (1992)	x	\$150	=	\$ 1,312.50
11.25 hours (1993)	x	\$165	=	1,856.25
5.75 hours (1994)	x	\$200	=	1,150.00
37.75 hours (1995-96)	x	\$210	=	7,927.50

Michel Peter Florio (TURN)

1.5 hours (1994-95)	x	\$235	=	\$ 352.50
2.0 hours (1995-96)	x	\$250	=	500.00

² Also, see Supplement dated August 19, 1996.

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Theresa Mueller (TURN)

23.5 hours (1994-95)	x	\$160	=	\$ 3,800.00
8.0 hours (1995-96)	x	\$185	=	1,480.00

Michael Shames (UCAN)

13.60 hours (1992-93)	x	\$165	=	\$ 2,244.00
17.70 hours (1994)	x	\$170	=	3,009.00
11.60 hours (1995-96)	x	\$175	=	2,030.00

Subtotal = \$25,661.75

Expert Witness Fees and Expenses

JBS Energy, Inc.

Jeff Nahigian

113.25 hours	x	\$ 70	=	\$ 7,927.50
426.80 hours	x	\$ 75	=	32,010.00

William Marcus

9.00 hours	x	\$125	=	\$ 1,125.00
17.25 hours	x	\$135	=	2,328.75

Steve Helmich

2.00 hours	x	\$ 40	=	\$ 80.00
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Greg Ruszovan

0.60 hours	x	\$ 75	=	\$ 45.00
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JBS Expenses = \$ 2,526.39

<u>Other Reasonable Costs</u>	Subtotal =	\$46,042.64
Photocopying expense	=	603.10
Postage costs	=	147.22
Fax charges	=	30.00
Phone expense	=	153.83
	Subtotal =	\$ 934.15
	Total =	<u>\$72,638.54</u>

8. Hourly Rates, Hours Claimed and Other Costs

TURN and UCAN request: (1) an hourly rate of \$150 for the work performed by attorney Robert Finkelstein in 1992, \$165 for work performed in 1993, \$200 for work performed in 1994, and \$210 for work performed in 1995 and 1996; (2) an hourly rate of \$160 for work performed by attorney Theresa Mueller during fiscal year 1994-95, and \$185 for work performed in 1995-96; (3) an hourly rate of \$250 for the work performed by attorney Michel Florio through June 30, 1995, and \$260 for his work in 1995-96; (4) an hourly rate of \$165 for the work performed attorney Michael Shames in 1992 and 1993, \$170 for 1994, and \$175 for 1995 and 1996.

The Commission has previously awarded compensation to these attorneys at the hourly rates set forth above. We find that these hourly rates are reasonable.

Outside consulting services were performed on TURN and UCAN's behalf by the staff of JBS Energy, Inc. (JBS Energy). Jeff Nahigian, Associate Economist for JBS Energy, served as TURN and UCAN's expert witness throughout this proceeding and was responsible for developing and presenting TURN and UCAN's positions on line extension issues. Nahigian attended the workshops, engaged in informal meetings with the utilities and other parties interested in line extension issues, and either drafted or reviewed all testimony.

Nahigian had a billing rate of \$70 per hour at the time the rulemaking was opened. This billing rate was in effect until mid-1993, when JBS Energy increased the billing rate for its employees. At that time, Nahigian's rate increased to \$75 per hour. The billing rate of \$70 per hour for Nahigian's work prior to mid-1993 was approved by

this Commission in D.93-12-052 for work performed primarily in 1992 (p. 8). The Commission has also approved the higher \$75 rate for work performed after mid-1993 (D.96-05-052, pp. 6-7).

William Marcus supervised the work of Nahigian and helped develop the positions presented by Nahigian during workshops and in written comments and testimony. JBS Energy billed TURN and UCAN at an hourly rate of \$125 for work performed prior to mid-1993. This rate was approved by the Commission in D.93-12-052 (p. 8). After mid-1993, Marcus' billing rate increased to \$135 per hour. The Commission approved this rate in D.95-04-059 for work performed primarily in 1994 (pp. 4-5), and recently affirmed this rate for work performed in 1994 and 1995 [D.96-08-023, p. 7 (A.93-12-025, Phase 2)].

Small amounts of time were devoted to this proceeding by JBS Energy Associates Steve Helmich (two hours in 1992) and Greg Ruzovan (0.6 hours in 1995). The hourly rates sought for these two associates is consistent both with the actual billing rate for work performed during the time period in question, and with rates approved by the Commission in past compensation decisions.

TURN and UCAN also seek recovery of the reasonable expenses JBS Energy incurred during the course of its work on this proceeding. The expenses reflect travel costs incurred by JBS Energy's employees in connection with their work in this proceeding, primarily Nahigian's trips to participate in workshops and other informal meetings. These expenses amount to \$2,526.39. JBS Energy's normal billing practice is to bill TURN and UCAN for only half the time spent travelling. Thus the hours billed for the days on which Nahigian was required to travel reflect only half the travel time. These expenses also include facsimile charges arising for transmitting messages and documents related to this proceeding.

We conclude that TURN and UCAN should be compensated in full for the services provided by JBS Energy.

TURN and UCAN also request \$934.15 to recover costs of their photocopying, postage, facsimile and telephone charges. We find TURN and UCAN's request to be reasonable.

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. In those cases, 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, e.g., D.96-08-023, D.97-02-047, and D.97-02-048.) However, in this instance we do not believe such an adjustment should be made. TURN and UCAN's request for compensation comprises 22 pages of legal argument (excluding attachments) for which attorney Finkelstein has requested 13 hours. We conclude that given the unusual nature of this proceeding and the extensive justification that was necessarily required, we consider TURN and UCAN's filing equivalent to a legal brief. Therefore, no adjustment should be made.

9. Award

Accordingly, we will grant TURN and UCAN's request for compensation related to D.94-12-026 et al. in the requested amount of \$72,638.54.

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 November 2, 1996 (the 75th day after TURN and UCAN filed their supplemental compensation request)¹ and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN and UCAN on notice that the Commission's Energy Division may audit TURN and UCAN's records related to this award. Thus, TURN and UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN and UCAN's records should identify specific issues for which they request 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.

¹ The supplemental request was filed on August 19, 1996.

10. Allocation Amongst the Utilities, and Proposed Method of Payment

TURN and UCAN suggest the following as an equitable allocation between the four major utilities: Any compensation award should be divided amongst the utilities who participated in this rulemaking according to their total recorded Commission jurisdictional revenues for 1995. TURN and UCAN submit that such an allocation will fairly reflect the size differences of the various utilities who were subject to this rulemaking.

In order to minimize any administrative burden, TURN and UCAN request that the utilities be directed to pay their portion of any compensation award directly to TURN alone. TURN will then forward to UCAN its share of that award. UCAN agreed to this treatment. We agree.

Findings of Fact

1. Several parties have filed applications for rehearing on the issues for which TURN and UCAN are requesting compensation in this proceeding. Those applications are currently pending.

2. The interpretation of Rule 76.72 adopted in D.97-10-026 dated October 9, 1997, is a fairer, more equitable interpretation in light of our rehearing backlog and the statutory intent of the intervenor compensation program.

3. TURN and UCAN's request for an award of compensation is timely.

4. As a result of modification of a decision in the context of considering an application for rehearing, or the granting of rehearing, that action does not remove the fact that a majority of the Commission was at an earlier time persuaded to adopt a contention or recommendation presented by the intervenor.

5. TURN and UCAN contributed substantially to D.94-12-026, D.95-12-013 and D.96-06-031.

6. TURN and UCAN's claimed hours are reasonable.

7. TURN and UCAN have requested attorney hourly rates that have previously been approved by the Commission.

8. TURN and UCAN's requested attorney fees for preparation of this compensation request should not be reduced.

9. TURN and UCAN have requested hourly rates for experts and consultants that have previously been approved by the Commission.

10. The other costs incurred by TURN and UCAN are reasonable.

Conclusions of Law

1. As previously decided in D.97-10-026, Rule 76.72 should be read to allow an intervenor to file a request for compensation after a final order or decision has been made in case on which the intervenor believes it has made a substantial contribution, regardless of the pendency of an application for rehearing.

2. TURN and UCAN have met the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

3. TURN and UCAN should be awarded \$72,638.54 for their contribution to D.94-12-026, D.95-12-013 and D.96-06-031.

4. This order should be effective today so that TURN and UCAN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) and Utility Consumers' Action Network (UCAN) are awarded \$72,638.54 in compensation for their substantial contribution to Decision (D.) 94-12-026, D.95-12-013 and D.96-06-031.

2. As decided previously in D.97-10-026, Rule 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. As discussed above, Southern California Gas Company, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall pay TURN and UCAN \$72,638.54 within 30 days of the effective date of

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this order. These utilities 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 November 2, 1996, and continuing until full payment is made.

4. This proceeding remains open to address other matters.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

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