

Mailed
FEB 4 1998

Decision 98-02-011 February 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into
procurement and system reliability issues
deferred from D.86-12-010.

Investigation 87-03-036
(Filed March 25, 1987)

In the Matter of The Application of
SOUTHERN CALIFORNIA GAS COMPANY
(U 904 G). For Authority To Revise Its Rates
And Recover Costs For Implementation Of Its
Customer Storage Program.

Application 92-03-038
(Filed March 18, 1992)

ORIGINAL

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$100,123 in compensation for its contribution to Decision (D.) 88-11-034, D.89-01-017, D.93-02-013, D.93-09-090, D.94-12-057, and D.97-04-005.

1. Background

This proceeding was initiated as an investigation into natural gas storage unbundling and related issues. It initially included a number of issues other than gas storage.

On April 9, 1997, the Commission issued D.97-04-005 closing Investigation (I.) 87-03-036 and Application (A.) 92-03-038, and declaring that action a "final order" for purposes of triggering intervenor compensation filings.

On June 9, 1997, TURN timely filed its request for compensation. In its intervenor compensation request, TURN is now seeking compensation for contributions to D.88-11-034, D.89-01-017, D.93-02-013, D.93-09-090, D.94-12-057, and D.97-04-005. This request relates only to storage issues, procedural issues and other work not allocatable by issue, and compensation-related work.

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.

3. NOI to Claim Compensation

TURN was found eligible to claim compensation in this proceeding by D.88-11-057.

4. Contribution to Resolution of Issues

TURN represents its contributions as follows.

D.88-11-034 and D.89-01-017

In the first phase of the gas storage investigation, TURN offered comments on the scope and timing of the proceeding, presented prepared direct and supplemental testimony, filed an opening brief, and provided comments on the Administrative Law Judge's (ALJ) Proposed Decision (PD).

Probably TURN's most significant contribution to D.88-11-034 came through its comments on the PD, which urged the Commission not to adopt the fully unbundled storage program set forth in the PD. The Commission agreed with TURN and adopted in D.88-11-034 a pilot storage banking program that stopped well short of full unbundling.

D.88-11-034 repeatedly emphasized the role of storage in system integration and optimization, as advocated by TURN. In addition, the decision adopted several of TURN's positions on lesser issues, including allocation of storage capacity to wholesale customers consistent with the percentage of storage fixed costs allocated to the wholesale customer's core load; limitation on the "incentive" payment retained by the utilities to 5% of storage banking reservation fee revenues; assurance that storage banking would not be allowed to impact the reliability or cost of core service; and clarification of curtailment priorities for banking customers in the event of a capacity shortage. Finally, D.89-01-017 modified D.88-11-034 to provide that gas transportation charges would be levied when gas is withdrawn from storage, not when it is injected.

D.93-02-013 and D.93-09-090

TURN focused attention on the proposals for a core storage withdrawal capacity reservation, since this reservation is a major driver of the core cost allocation.

D.93-02-013 accepted most of TURN's arguments and reduced Southern California Gas Company's (SoCalGas) proposed reservation by 300 million cubic feet per day (MMcf/d).

TURN also devoted considerable time to the issue of risk allocation for unbundled storage. TURN argued that if the utilities expanded their storage facilities to

serve contract customers on an unbundled basis, then any costs incurred in excess of the company's projections should not be the responsibility of nonexpansion customers.

These principles were reflected in the final rules adopted by the Commission. Similarly, TURN contended that the utilities should not be allowed to pass 100% of their revenue shortfalls resulting from discounting of storage rates along to ratepayers through a balancing account. D.93-02-013 limited balancing account protection of revenue shortfalls to 75%, and directed that such shortfalls would be recovered from the noncore only.

Further, TURN opposed the on-system customer preference suggested by some of the other parties. In response, D.93-02-013 strictly limited the duration of the allowed on system preference.

Finally, TURN responded briefly to the applications for rehearing of D.93-02-013 filed by Pacific Gas and Electric Company (PG&E) and McFarland Energy, Inc. D.93-09-090 resolved those applications in a manner consistent with the arguments presented by TURN.

D.94-12-057

TURN included in its compensation request following D.94-05-069 the time spent by its staff on the issue of the allocation of load balancing costs, which had been challenged by PG&E through an application for rehearing. Since that application had not yet been resolved at the time of D.94-11-048, TURN agreed to defer compensation for the 2.25 hours of Mr. Allen's time and the 2.9 hours of Mr. Florio's time devoted to that issue.

Subsequently, D.94-12-057 denied PG&E's request for rehearing, upholding the position of TURN with respect to load balancing cost allocation. TURN is now requesting compensation for this time.

D.97-04-005

On January 7, 1997, the assigned ALJ issued a ruling seeking comments on whether this proceeding could be closed. TURN responded by explaining that all of the outstanding work in this docket had been completed, and requesting that any order provide for the filing of a request for intervenor compensation. D.97-04-005 thereafter

closed the proceeding in a manner consistent with TURN's comments. TURN has therefore included the 0.75 hours spent preparing these procedural comments.

Discussion

We agree with TURN's representation of its contributions to the above decisions. TURN made a substantial contribution to the above decisions and should be compensated for all hours claimed.

5. The Reasonableness of Requested Compensation

In its June 9, 1997 filing TURN requests compensation in the amount of \$104,172 as follows:

TURN Staff—Attorney and Witness Fees:

M. P. Florio:

20.00	hours	X \$260 (1995-97)	=	\$7,800
2.90	hours	X \$235 (1993-94)	=	681
120.75	hours	X \$210 (1992-93)	=	25,358
33.50	hours	X \$200 (1991-92) X 1.2	=	8,040
22.25	hours	X \$175 (1988-90) + \$25	=	4,450
1.00	hours	X \$175 (1988-90)	=	175
129.25	hours	X \$160 (1987-88) + \$25	=	23,911
2.00	hours	X \$160 (1987-88)	=	320

P. V. Allen:

5.00	hours	X \$170 (1993)	=	850
188.50	hours	X \$150 (1992)	=	<u>28,275</u>
Subtotal			=	\$99,860

Other Costs:

Photocopying expenses	=	3,888
Postage costs	=	300
Attorney Expenses	=	<u>124</u>
Subtotal	=	<u>\$4,312</u>
TOTAL	=	\$104,172

5.1. Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for each attorney by issue with a brief description of each activity. In this instance all hours claimed are for storage issues, procedural issues not allocable by issue, and preparing the compensation request. We are satisfied that these hours were reasonably incurred as represented by TURN.

5.2. Hourly Rates

TURN represents that the hourly rates for the time periods requested have been previously approved by the Commission. TURN is correct. We will use the rates requested by TURN.

TURN requests an efficiency adder for Mr. Florio for those instances where he functioned both as an expert witness and an attorney. The requested efficiency adder is \$25 for 1987-90 and 20% beginning in mid-1991. This request is consistent with our previous decisions regarding Mr. Florio's compensation rates and will be adopted (e.g. D.93-04-048, D.92-03-067).

TURN requests the full compensation rate for the 32.25 hours Mr. Florio spent on the compensation request. TURN represents that since it was precluded from claiming compensation for its work in this proceeding for a considerable length of time because a final order had not been issued, the full rate should be allowed. The compensation rate for request preparation is not a time value of money issue. We will allow half of the full rate as has been our practice.

5.3. Other Costs

The expenses for photocopying, postage and attorney expenses are a small (4%) portion of the request and were incurred for these proceedings. They are, therefore, reasonable and will be allowed.

6. Award

We award TURN \$100,123 calculated as follows:

Prior to 1991

M. P. Florio:

22.50 hours X \$175 (1988-90) + \$25	=	\$4,450
1.00 hours X \$175 (1988-90) X 0.5	=	88
129.25 hours X \$160 (1987-88) + \$25	=	23,911
2.00 hours X \$160 (1987-88) X 0.5	=	<u>160</u>
Subtotal	=	\$28,609

July 1991-April 1, 1992

M.P. Florio:

33.50 hours X \$200 (1991-92) X 1.2	=	\$8,040
-------------------------------------	---	---------

After April 1, 1992

M. P. Florio:

0.75 hours X \$260 (1995-97)	=	\$195
29.25 hours X \$260 (1995-97) X 0.5	=	3,803
2.90 hours X \$235 (1993-94)	=	681
120.75 hours X \$210 (1992-93)	=	25,358

P. V. Allen:

5.0 hours X \$170 (1993)	=	850
188.50 hours X \$150 (1992)	=	<u>28,275</u>
Subtotal	=	\$59,162

Total Attorney Fees	=	\$95,811
---------------------	---	----------

Other Reasonable Costs:

Photocopying expenses	=	\$3,888
Postage costs	=	300

Attorney Expenses	=	<u>124</u>
Subtotal	=	4,312
Total Award	=	\$100,123

7. Allocation of Award Among Utilities

TURN suggests that the compensation for its work prior to 1991 be allocated equally between PG&E and SoCalGas, since the issues were primarily not company-specific. From July of 1991 through the April 1, 1992 prehearing conference, TURN's work was entirely SoCalGas specific. After April 1, 1997, TURN suggests allocating half of the compensation equally between PG&E and SoCalGas, to reflect work on policy issues, and the other half entirely to SoCalGas, to reflect work on company-specific issues.

Since neither PG&E nor SoCalGas filed comments on TURN's request for compensation and it appears reasonable, we will adopt TURN's requested allocation methodology.

We allocate the award between PG&E and SoCalGas as follows:

	<u>PG&E</u>	<u>SoCalGas</u>	<u>Total</u>
Attorney Fees:			
Prior to 1991	\$14,305	\$14,304	\$28,609
July 1991-April 1, 1992	0	8,040	8,040
After April 1, 1992	<u>14,790</u>	<u>44,372</u>	<u>59,162</u>
Subtotal	\$29,095	\$66,716	\$95,811
Other Costs: ¹	<u>1,309</u>	<u>3,003</u>	<u>4,312</u>
Total	\$30,404	\$69,719	\$100,123

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

¹ Other costs are allocated in the same proportion as attorney fees.

commencing August 23, 1997 (the 75th day after TURN filed its compensation request) and continuing until the utilities make full payment of the awards.

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 D.88-11-057.
2. On June 9, 1997, TURN filed a timely request for compensation for its contribution to D.88-11-034, D.89-01-017, D.93-02-013, D.93-09-090, D.94-12-057, and D.97-04-005.
3. TURN made substantial contributions to the above decisions.
4. TURN's requested hourly rates have been previously approved by the Commission and are therefore no more than the market rates for individuals with comparable training and experience.
5. TURN's requested attorney fees for preparation of its compensation request should be reduced by 50%, consistent with prior treatment of such costs.
6. The costs incurred by TURN for photocopying, postage, and attorney expenses 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 \$100,123 for its contribution to D.88-11-034, D.89-01-017, D.93-02-013, D.93-09-090, D.94-12-057, and D.97-04-005.

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 \$100, 123 in compensation for its substantial contribution to Decision (D.) 88-11-034, D.89-01-017, D.93-02-013, D.93-09-090, D.94-12-057, and D.97-04-005.

2. Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCalGas) shall each pay TURN \$30,404 and \$69,719, respectively, within 30 days of the effective date of this order. PG&E and SoCalGas 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 August 23, 1997 and continuing until full payment is made.

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