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Decision 98-03-065 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY to Modify Diablo
Canyon Pricing and Adopt a Customer
Electric Rate Freeze in Compliance with
D.95-12-063.

ORIGINAL

Application 96-03-054
(Filed March 29, 1996)

OPINION AWARDING COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of \$112,470.32, and San Luis Obispo Mothers for Peace, Rochelle Becker, and Life on Planet Earth (SLO), participating as a group, a collective award of \$9,698.89, in compensation for their respective contributions to Decision (D.) 97-05-088. We also grant TURN's motion to amend its request for compensation.

Background

TURN and the SLO parties seek intervenor compensation for their contributions to D.97-05-088, a decision issued in response to an Application by Pacific Gas and Electric Company (PG&E) to adopt a customer rate freeze and to modify pricing for electricity produced by the Diablo Canyon Nuclear Power Plant (Diablo Canyon). PG&E sought the rate modification in order to comply with D.95-12-063. In that decision, we required PG&E to price Diablo Canyon's output at market rates by the end of 2003, and recover its transition costs by 2005. In D.97-05-088, the Commission determined the sunk costs and the incremental cost incentive price (ICIP) of Diablo Canyon, and decided other ancillary matters regarding operation of the plant.

The intervenors participated in several stages of the decision. Both intervenors filed extensive briefs and sponsored testimony. TURN was an active participant throughout the hearings and sponsored testimony on many complex issues. SLO primarily contributed by sponsoring testimony and briefing the Commission on the safety effects of adopting PG&B's rate proposals.

1. 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 §§ 1801-1812¹. 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 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

¹ All further citations are to the PU Code unless otherwise noted.

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.

2. NOI to Claim Compensation and Financial Hardship

TURN and SLO each timely filed a NOI. TURN was found to be eligible for compensation in this proceeding by a ruling dated July 2, 1996. SLO was found to be eligible to request compensation on September 24, 1996, but delayed making a showing of financial hardship until now. Section 1802(g) defines "significant financial hardship" to mean:

"either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

The Commission found SLO to have demonstrated significant financial hardship in D.89-03-063, and SLO's status does not appear to have changed since then. SLO has virtually no economic interest in these proceedings. SLO argued against the ICIP concept, which may have actually lowered customer rates. When its economic interest is compared to the substantial costs SLO incurred in participating, we find SLO to have met the financial hardship requirement.

3. Contributions to Resolution of Issues

3.1. TURN's Contributions

TURN claims to have substantially contributed to D.97-05-088 in three major areas. First, TURN advocated the need for an adjustment to Diablo Canyon's sunk costs to reflect the lack of reasonableness review of construction costs as required by § 463. TURN successfully argued that § 463 should apply to Diablo Canyon, and was the primary advocate on this issue.

Second, TURN argued that certain inventories, namely nuclear fuel and various materials and supplies, should not be included as a sunk cost. TURN and the Office of Ratepayer Advocates (ORA) advocated similar positions, but our decision reflects TURN's substantial leadership on the issue. TURN's advocacy saved ratepayers from twice paying the costs of out-of-core fuel. In all, TURN succeeded in arguing that roughly \$100 million should be disallowed from Diablo Canyon's sunk costs.

Third, TURN and ORA supported the development of reasonable ICIP prices. The Commission adopted their recommendations in determining Diablo Canyon's capacity factor. TURN's proposed 1.5% escalation rate was also adopted over PG&E's proposed 3.1% rate. Overall, the ICIP determination made by the Commission reflected TURN's considerable contributions.

Although not all of TURN's proposals were adopted by the Commission in the final decision, we find that TURN made substantial contributions to D.97-05-088 in the areas it identifies.

3.2. SLO's Contributions

SLO addressed the safety effects of PG&E's ratemaking proposals. According to SLO, the transition to economic competition is likely to result in safety problems at Diablo Canyon. The issues examined by SLO were not

addressed by any other party. SLO pointed out that Diablo Canyon's safety performance had already been downgraded by the US Nuclear Regulatory Commission in a 1996 Systematic Assessment of Licensee Performance. SLO attributed the safety downgrade to PG&E's preparation for economic competition. SLO also opposed PG&E's attempt to discontinue the Independent Safety Committee. SLO's advocacy was instrumental to our decision to keep the Safety Committee in existence.

SLO's contributions to D.97-05-088 were apparent to Administrative Law Judge (ALJ) Barnett, who presided over these proceedings. However, SLO is admonished to include a detailed showing of its contributions in all future requests for compensation. 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." In addition to conforming to the PU Code, there is a practical reason to require a detailed showing. The ALJ presiding over a proceeding may not be the same ALJ determining the compensation request. For this reason, SLO will be expected to provide more detail regarding its contribution in its compensation requests in the future. With ALJ Barnett's assistance, we find that SLO made substantial contributions to D.97-05-088.

4. The Reasonableness of Requested Compensation

TURN requests compensation, as amended, in the amount of \$ 113,361.57

as follows:

Attorney Fees

Robert Finkelstein	253.5 hrs.	x	\$ 220/hr.	=	\$ 55,770.00
(1997 rate)	51.0 hrs.	x	\$ 235/hr.	=	\$ 11,985.00
Michel P. Florio	7.5 hrs.	x	\$ 260/hr.	=	\$ 1,950.00
(fiscal 1997 rate)	48.25 hrs.	x	\$ 275/hr.	=	\$ 13,268.75
			Subtotal	=	\$ 82,973.75

Expert Witness Fees and Expenses

JBS ENERGY INC.

William Marcus	129 hrs.	x	\$140/hr.	=	\$ 18,060.00
(1997 rate)	14.25 hrs.	x	\$145/hr.	=	\$ 2,066.25
Jeff Nahigian	45.0 hrs.	x	\$80/hr.	=	\$ 3,600.00
Greg Ruszovan	3.7 hrs.	x	\$80/hr.	=	\$ 296.00
Gayatri Schilberg	11.75 hrs.	x	\$100/hr.	=	\$ 1,175.00
JOS Expenses				=	\$ 766.20
			Subtotal	=	\$ 25,963.45

Other Reasonable Costs

Photocopying				=	\$ 3,180.00
Postage				=	\$ 643.73
Fax charges				=	\$ 427.20
Phone				=	\$ 170.44
Attorney expense				=	\$ 3.00
			Subtotal	=	\$ 4,424.37

TOTAL = \$ 113,361.57

SLO requests compensation in the amount of \$9,698.89 as follows:

Representative Fees

Rochelle Becker 113.75 hrs. x \$75/hr. = \$ 8,531.25

Expenses

Airfare \$220/each x 3 = \$ 666.00

Postage = \$ 326.29

Phone and Fax = \$ 27.83

Photocopying = \$ 147.52

Total expenses = \$ 1,167.64

Total fees = \$ 8,531.25

TOTAL = \$ 9,698.89

4.1. Hours Claimed

TURN documented its claimed hours by providing a daily breakdown of hours for Mr. Finkelstein and Mr. Florio. While the breakdown reasonably supports TURN's claim for total hours, we remind TURN that allocation of time and costs by issue, not just by task, should be provided. Given the quality and comprehensiveness of TURN's briefs and subsequent testimony, we believe that the many hours spent by TURN on the PG&B Application were time well spent. The hours claimed by TURN's consulting firm and expert witnesses also appear reasonable. We note that JBS Energy used its resources efficiently by delegating work to lower-priced associates whenever possible.

Given the extent of SLO's involvement on the PG&B Application, the hours claimed for Ms. Becker also appear reasonable. We note that SLO was able to participate in the proceedings without the added expense of an attorney due to the dual roles performed by Ms. Becker. However, without presenting a daily breakdown of hours for Ms. Becker, it is difficult to definitively determine if the hours are reasonable. SLO is again admonished to provide a detailed breakdown

of the hours spent by its representative. In this instance, we were able to determine that the hours claimed by SLO are reasonable with ALJ Barnett's assistance.

4.2. Hourly Rates

TURN requests that the Commission remain consistent with past practices by granting its attorney Mr. Finkelstein \$220 an hour for 1996, and attorney Mr. Florio \$260 an hour for the 1996 fiscal year. TURN observes that these rates are equal to the rates approved by the Commission in D.97-02-048 and D.96-06-020, respectively. TURN also proposes that the 1997 hourly rate for Mr. Finkelstein be increased to \$235, and that the 1997 fiscal year hourly rate for Mr. Florio be increased to \$275. TURN supports these requests by indicating that these rates are on the low-end of the market rates for attorneys of comparable experience and training. TURN also submitted declarations from other attorneys to demonstrate the reasonableness of the increased rate for Mr. Florio.

We will apply the previously adopted rates for Mr. Finkelstein and Mr. Florio, for work performed in 1996. We also grant TURN's request for the increased rates, with the exception of the full hourly rates TURN requests for preparation of the intervenor compensation request. We reject TURN's request for full hourly compensation for these hours, and reduce TURN's award accordingly. Mr. Finkelstein devoted 7.0 hours to preparing TURN's compensation request, so TURN will receive only half the hourly rate for these hours. Mr. Florio, who devoted half an hour to the compensation request, will also only receive half his hourly rate for these hours.

TURN requests various rates for Mr. Marcus and the staff of JBS Energy as indicated above. Mr. Marcus received his M.A. in economics in 1975, and has extensive experience in the field of energy policy. TURN comments that the 1996

hourly rates for Mr. Marcus and the JBS Energy staff were approved by the Commission in D.97-05-070. We will apply these rates for 1996. TURN also requests a \$5 an hour increase to reflect Mr. Marcus' new billing rates for 1997. TURN points out that the requested rates are the actual rates that JBS billed TURN. Considering Mr. Marcus' credentials, and the lapse of time since JBS' rates were last increased, we find this increase, to \$145 an hour, to be reasonable.

SLO requests that its representative, Ms. Becker, be compensated at \$75 an hour. SLO justifies the hourly rate for Ms. Becker by pointing out that she has years of experience as an advocate in Diablo Canyon safety issues. Ms. Becker was compensated at an hourly rate of \$50 an hour for past work at Diablo Canyon in D.89-03-063, nearly nine years ago. We note that Ms. Becker's presence obviates the need for a higher-priced attorney. In proceedings of comparable complexity, expert witness fees commonly range from \$30-90 an hour. See e.g., A. 92-10-017. We also note that paralegals are often compensated at \$75 an hour. Given Ms. Becker's skill in this specialized field, her fee is comparable to other representatives of similar training. The fee increase requested by SLO is granted.

4.3. Other Costs

TURN claims \$4,424.37 in other costs. TURN itemized these costs by indicating the amount it spent in various areas. Given the large service list, and the extensive work required to coordinate TURN's work in the proceeding, all the costs appear reasonable. We especially appreciate TURN's candor in correcting an error accruing to its advantage that it had made in its compensation request.

SLO requests \$1,167.64 for other reasonable costs. Although SLO failed to itemize the number of mailings and total number of pages it was required to send

to the many addresses on the service list in this proceeding, it is apparent that the costs claimed are reasonable.

5. Award

We award TURN \$112,470.32. TURN's amended request is reduced by \$891.25 because we reject its request for full hourly compensation for preparing the compensation request. 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 October 9, 1997 (the 75th day after TURN filed its compensation request), and continuing until the utility makes full payment of this award.

We award the SLO parties \$9,698.89, 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 October 12, 1997, and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put both TURN and SLO on notice that the Commission Energy Division may audit their records related to this award. Thus, both TURN and SLO must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The intervenor'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.97-05-088.

2. SLO has made a timely request for compensation for its contribution to D.97-05-088.

3. SLO has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.

4. TURN contributed substantially to D.97-05-088.

5. SLO contributed substantially to D.97-05-088.

6. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

7. SLO has requested an hourly rate for Rochelle Becker that is no greater than the market rates for individuals with comparable training and experience.

8. The miscellaneous costs incurred by TURN are reasonable.

9. The miscellaneous costs incurred by SLO are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

2. SLO has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

3. TURN should be awarded \$112,470.32 for its contribution to D.97-05-088.

4. SLO should be awarded \$9,698.89 for its contribution to D.97-05-088.

5. This order should be effective today so that TURN and SLO may be compensated without unnecessary delay.

ORDER

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$112,470.32 in compensation for its substantial contribution to Decision (D.) 97-05-088.
2. Pacific Gas and Electric Company (PG&E) shall pay TURN \$112,470.32 within 30 days of the effective date of this order.
3. San Luis Obispo Mothers for Peace, Rochelle Becker, and Life on Planet Earth (SLO) are awarded \$9,698.89 in compensation for their substantial contribution to D.97-05-088.
4. PG&E shall pay SLO \$9,698.89 within 30 days of the effective date of this order.
5. PG&E shall also pay interest on these awards at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13. TURN shall be paid interest commencing October 9, 1997, and continuing until full payment is made. SLO shall be paid interest commencing October 12, 1997, and continuing until full payment is made.

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

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