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Decision 98-04-028 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of Valuation and Categorization of
Non-Nuclear Generation-Related Sunk Costs
Eligible for Recovery in the Competition
Transition Charge.

Application 96-08-001
(Filed August 1, 1996)

ORIGINAL

Application of San Diego Gas & Electric
Company to Identify and Value the Sunk Costs of
its Non-Nuclear Generation Assets.

Application 96-08-006
(Filed August 1, 1996)

Application of Southern California Edison
Company to Identify and Value the Sunk Costs of
its Non-Nuclear Generation Assets, in
Compliance with Ordering Paragraph No. 25 of
D.95-12-063 (as modified by D.96-01-009 and
D.96-03-022).

Application 96-08-007
(Filed August 1, 1996)

Application of Pacific Gas and Electric Company
To Establish the Competition Transition Charge.

Application 96-08-070
(Filed August 30, 1996)

In the Matter of the Application of Southern
California Edison Company to estimate its
Transition Costs as of January 1, 1998 in
Compliance with Ordering Paragraph 26 of
D.95-12-063 (as modified by D.96-01-009 and
D.96-03-022), and related changes.

Application 96-08-071
(Filed August 30, 1996)

Application of San Diego Gas & Electric
Company to Estimate Transition Costs and to
Establish a Transition Cost Balancing Account.

Application 96-08-072
(Filed August 30, 1996)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$126,750 in compensation for its contribution to Decision (D.) 97-06-060 and D.97-11-074. We note that this request for compensation was filed jointly by TURN and the Utility Consumers Awareness Network (UCAN). UCAN did not file a Notice of Intent (NOI) in this proceeding, as required by Public Utilities (PU) Code § 1804.¹ Therefore, we are precluded from awarding any compensation to UCAN.

1. Background

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) filed the above-captioned applications seeking approval of various uneconomic generation-related costs which would be stranded in the transition to a new market structure in electric restructuring. D.97-06-060 addressed various ratemaking issues associated with such costs, including establishing the Transition Cost Balancing Accounts for each utility. Most importantly, D.97-06-060 determined that it is not appropriate to allow the utilities complete discretion in applying revenues to offset transition costs and provided guidelines that required that more expensive assets be recovered first. D.97-11-074 addressed the various categories of costs that PG&E, Edison, and SDG&E claimed as transition costs. On a net present value basis, the three utilities requested recovery of transition cost categories that would equal approximately \$28 billion over the total recovery period, assuming all such costs were approved for recovery. In D.97-11-074, we determined the eligibility of various categories of non-nuclear costs for transition cost recovery, consistent with the mandates of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854) and the Preferred Policy Decision

¹ All statutory references are to the Public Utilities Code, unless otherwise noted.

(D.95-12-063, as modified by D.96-01-009) in our electric restructuring Rulemaking (R.) 94-04-031 and Investigation (I.) 94-04-032. In addition, this decision quantified the net book value of various generation assets, which will be used as the starting point for market valuation. This decision also addressed important rate of return issues associated with transition cost assets.¹

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to PU Code §§ 1801-1812. Section 1804(a) requires an intervenor to file an 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

¹ On December 22, 1998, PG&E, Edison, and SDG&E filed an application for rehearing of D.97-11-074 which seeks rehearing on several issues related to the application of the reduced rate of return. The findings in this decision do not prejudice our determination of this pending application for rehearing.

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 timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by ruling dated October 24, 1996. The same ruling found that TURN received a finding of significant financial hardship in a ruling dated February 15, 1996. Because these proceedings commenced within one year of that finding, the rebuttable presumption of eligibility of compensation provided in § 1804(b)(1) is still applicable.

Division 1, Part 1, Chapter 9, Article 5 of the PU Code provides specific requirements for those intervenors seeking compensation for participation in our proceedings. Section 1804 delineates explicit provisions regarding NOIs, which must be filed in order to later claim compensation. UCAN did not file an NOI, nor did TURN indicate in its NOI that this document was being filed on UCAN's behalf. We are therefore prohibited from awarding any compensation to UCAN in this proceeding.

4. Contributions to Resolution of Issues

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."

We agree that TURN made substantial contributions to both of these important policy decisions. In both Phase 1 and Phase 2, TURN participated actively in hearings and made a substantial contribution on several factual, legal, and policy issues. The Commission adopted ratemaking policies advocated by TURN in Phase 1. TURN addressed a wide variety of issues in Phase 2 and we adopted its recommendations in several areas, including the treatment of materials and supplies and fuel inventories, non-nuclear decommissioning costs, the treatment of land held by utilities at the plants the utilities proposed to divest, and rate of return issues. We adopted TURN's proposals in whole or in part on several of these issues and benefited from TURN's analysis and discussion on all of those issues which it addressed.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$129,865 as follows:

- Attorneys:

Robert Finklestein:	54.25 hours	X	\$220	=	\$11,935.00
	316.75 hours	X	\$235	=	74,436.25

Michel P. Florio	2.5 hours	X	\$275	=	687.50
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Subtotal	=	\$87,058.75
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- Expert Witnesses:

JBS Energy, Inc.

William Marcus	35	hours X	\$140	=	\$ 4,935.00
	124	hours X	\$145	=	18,088.75

Jeff Nahigian	131	hours X	\$80		=10,480.00
	22.5	hours X	\$85	=	1,912.50

Greg Ruzovan	21	hours X	\$80		= 1,680.00
JBS Expenses					698.70

Subtotal	=	\$37,794.95
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Total	=	\$129,865.00
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- Other reasonable costs:

Photocopying expense		=	\$ 3,593.87
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Postage costs		=	773.44
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Fax charges		=	463.45
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Federal Express charges		=	17.09
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Phone expense		=	163.45
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Subtotal	=	\$ 5,011.30
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5.1. Hours Claimed

TURN documented the claimed hours by presenting a breakdown of hours for its attorneys with a brief description of each activity. The hourly breakdown presented by TURN reasonably supports its claim for total hours. The issues addressed in these consolidated proceedings were numerous and complex. Given the quality and comprehensiveness of the analysis and testimony, we believe that the many hours spent by TURN in preparing for and participating in these proceedings was time well spent.

TURN, however, claims 18 hours at Mr. Finkelstein's full hourly rate for preparing its compensation request. TURN submits that this a reasonable request, given that the attorney preparing the compensation request was also intimately

familiar with the issues and record in this proceeding. TURN recognizes that in recent compensation decisions, the Commission has in some cases granted full compensation for reasonable hours devoted to preparing compensation requests, while in other cases, we have reduced the hourly rate in half for the hours devoted to such requests, because such requests are essentially bills for services, and do not require a lawyer's skill to prepare. We find, consistent with our recent policy, that it is reasonable to grant half the hourly rate for the hours devoted to preparing compensation requests. We therefore reduce TURN's award by \$3,115.

TURN has otherwise thoroughly documented its participation and contribution to this proceeding and has, in general, adhered to our rules and findings regarding documentation and allocation of time to particular issues, when possible. Although more than one party raised certain issues that were similar, TURN endeavored to minimize duplication by working closely with other parties, such as the Department of General Services and the Office of Ratepayer Advocates. As we concluded in D.96-08-040, we expect to see some duplication of contribution in a broad multi-issue proceeding. Section 1802.5 allows full compensation to be awarded even where a party's participation has overlapped with the showings made by other parties. No reduction in TURN's award is warranted.

5.2. Hourly Rates

Mr. Finkelstein's rates of \$220 per hour for 1996 has been previously approved in D.97-02-048 and D.97-05-070. The higher rate for 1997 was approved

in D.98-04-027. Mr. Florio's rates for 1996 - 1997 were approved in D.97-12-076 and D. 98-04-027.³

TURN seeks to recover \$37,794.95 in costs billed to TURN by JBS Energy, Inc., which was the consulting firm providing the expert witness services for TURN. The hourly rates requested reflect the actual "recorded or billed costs" that TURN incurred in retaining their services, consistent with § 1802(c). The 1996 rates of \$140 per hour for Mr. Marcus and \$80 per hour for Mr. Nahigian and Mr. Ruszovan have been approved in prior decisions, including D.97-05-070. Mr. Marcus delegated some of his work to lower-priced associates at his consulting firm. In 1997, JBS Energy, Inc. increased its hourly rates by \$5 per hour. This increased rate has been approved for Mr. Marcus in D.97-05-070. The higher rates for Mr. Nahigian and Mr. Ruszovan have been approved in D. 98-04-027. We find TURN's requested hourly rates to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

5.3. Other Costs

TURN requests \$5,011.30 in other costs (e.g., copying, postage, telephone). This request is reasonable, as are the expenses incurred by JBS Energy, Inc., especially considering the amount of work involved in TURN's participation in this proceeding during 1996 and 1997.

6. Award

We award TURN \$126,750 calculated as described above. We will assess responsibility for payment equally among PG&E, Edison, and SDG&E, according to

³ Mr. Florio's hourly rate has traditionally been established on a fiscal year basis, rather than on a calendar year basis.

each utility's share of total retail sales of electricity in 1996, as measured in kilowatt hours, consistent with D.98-01-007.

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 on April 5, 1998, the 75th day after the date 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 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.97-06-060 and D.97-11-074.
2. TURN has previously made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. TURN contributed substantially to D.97-06-060 and D.97-11-074.
4. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.
5. It is reasonable to grant half the hourly rate for TURN's hours devoted to preparing compensation requests and to reduce TURN's award by \$3,115.
6. The miscellaneous costs incurred by TURN and JBS Energy, Inc. are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. UCAN has not fulfilled the requirements of §§ 1801-1812 and is therefore not awarded any compensation for this proceeding.
3. TURN should be awarded \$126,750 for its contribution to D.97-06-060 and D.97-11-074.
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 \$126,750 in compensation for its substantial contribution to Decision (D.) 97-06-060 and D. 97-11-074.
2. Pacific Gas and Electric Company (PG&E), Southern California Edison (Edison), and San Diego Gas & Electric Company (SDG&E) shall pay TURN each utility's share within 30 days of the effective date of this order. PG&E, Edison, and SDG&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,

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with interest, beginning on April 5, 1998, (the 75th day after the intervenor request for compensation was filed), and continuing until full payment is made.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners