

Decision 98-11-004 November 5, 1998

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

Order Instituting Rulemaking into natural gas procurement and system reliability issues.

Rulemaking 88-08-018  
(Filed August 10, 1988)

**ORIGINAL**

Rulemaking 90-02-008  
(Filed February 17, 1990)

And Related Matters.

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

Case 89-05-016  
(Filed May 10, 1989)

**OPINION**

This decision grants The Utility Reform Network (TURN) an award of \$260,057 in compensation for its contribution to numerous decisions in these dockets resolving issues related to natural gas industry restructuring which have been issued over the past ten years.

**1. Background**

These consolidated proceedings have over the past ten years addressed various matters relating to restructuring of the natural gas industry. We initiated these proceedings to open certain gas markets to competition and have since used these dockets to refine related rules. For example, we have developed rules which would govern the purchase of firm interstate pipeline capacity by noncore customers, the purchase of utility storage services by noncore customers, and the unbundling of gas supplies for certain core customers and aggregators. We have determined the allocation of stranded costs associated with these market

restructuring efforts and reviewed long term pipeline capacity contracts Southern California Gas Company (SoCalGas) signed with Southern California Edison Company (Edison) and San Diego Gas and Electric Company (SDG&E).

Most recently, the Commission issued Decision (D.) 98-06-082 which resolved an outstanding application for rehearing and closed this proceeding. That decision is effectively a final order in these proceedings. Accordingly, TURN has filed this request within 60 days of the issuance of the order, consistent with Rule 76.72.

## **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 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 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 for compensation in this proceeding by D.88-11-057. Since that time, TURN has received compensation in one or more of these dockets for work related to discrete sets of issues, including core aggregation rules (D.95-11-036), the SoCalGas "Global Settlement" (D.96-08-024), and gas storage issues (D.98-02-011). TURN states this request for compensation does not include amounts which have already been claimed in other filings or granted in other decisions.

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

A party may make a substantial contribution to a decision in three ways.<sup>1</sup> He may offer a factual or legal contention upon which the Commission relied in making a decision.<sup>2</sup> Or he may advance a specific policy or procedural

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<sup>1</sup> Cal. PUC § 1802(h).

<sup>2</sup> *Id.*

recommendation that the Administrative Law Judge (ALJ) or Commission adopted.<sup>3</sup> A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.<sup>4</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

TURN states it has made a substantial contribution to a number of decisions in these dockets. We agree as discussed below.

**Rulemaking (R.) 88-08-018.** The Commission issued this rulemaking order following several rounds of comments by parties in Investigation (I.) 87-03-036. As TURN observes, TURN influenced the Commission's thinking on numerous issues addressed in R.88-08-018, including the discussion of multiple supply portfolios, standby service, reasonableness reviews for noncore procurement, marketing of excess core supplies and the portfolio switching ban.

**D.88-12-099.** D.88-12-099 resolved several major rulemaking issues. TURN correctly observes that the Commission adopted its recommendations to retain the utility's flexibility to shift core portfolio purchases among pipelines and producing areas and to retain the core election option.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> D.89-03-96 awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved.

D.89-02-034. D.89-02-034 adopted a proposal designed to improve access to pipeline capacity for some suppliers. TURN suggested certain protections for core customers which the Commission adopted.

D.89-03-014. This decision adopted brokerage fees. In so doing, it adopted TURN's recommendation that marketing costs should be allocated to procurement customers rather than the general body of ratepayers.

D.89-04-080. Here, the Commission adopted TURN's view that price stability in gas supply contracts was not required in order to assure rate stability for customers. We adopted TURN'S position that gas prices for core customers should be changed on a monthly basis and that profits from marketing excess core gas supplies should accrue to the core portfolio.

Case (C.) 89-05-016. TURN's protest of SoCalGas' advice letters regarding long-term discounted contracts with Edison and SDG&E motivated the Commission to issue C.89-05-016, an Investigation and Suspension which reviewed the contracts for their effects on other customers.

D.89-11-060. In this decision, the Commission adopted TURN's recommendation regarding the treatment of transfers of long-term gas supplies to the noncore portfolio.

D.89-12-045. This order rejected the long term discounted contracts SoCalGas had signed with SDG&E and Edison, and provided guidelines for the conditions under which such contracts would be acceptable. The decision adopted many of TURN's views, including TURN's position that the discounts were not justified and the portfolio switching ban would not be waived for contract customers.

D.90-03-081. This decision denied SoCalGas' application for rehearing of D.89-11-060, confirming the adoption of TURN's proposal for pricing transfers of long-term gas to noncore customers.

Resolution G-2921. The Commission rejected several long-term contracts proposed by SoCalGas, adopting TURN's position with regard to demand charges, discounts for California gas, and elimination of standby charges.

Resolutions G-2930 and G-2932. These resolutions rejected contracts proposed by PG&E with C&H Sugar and Luz Solar Partners, largely on the basis of arguments presented by TURN.

D.91-11-025. In this decision, the Commission adopted major portions of a settlement signed by many parties, among them, TURN. The decision adopted a capacity brokering program, allocated associated stranded costs, core capacity reservations, and a requirement that the utilities market unused core pipeline capacity. These policies were generally consistent with TURN's position in the proceeding.

D.92-11-016. In this decision, the Commission adopted TURN's recommendation to approve PG&E's request to expand Line 300 only if PG&E could demonstrate a market demand for the capacity and to shield core ratepayers from the costs of the expansion.

Resolution G-3185. This decision adopted TURN's recommendation to require SoCalGas to separate costs and cost savings in accounts established for pipeline relinquishments.

TURN observes that it does not at this time seek compensation for work on the "capacity stepdown" issue because that matter is still pending on rehearing pursuant to D.98-07-100.

**5. The Reasonableness of Requested Compensation**

TURN's amended filing requests compensation in the amount of \$260,057 as follows:

M.P. Florio, Attorney:	
41.25 hours x \$290 (1998-1999)	\$11,962
1 hour x 260 (1995-1996)	260
2.75 hours x \$235 (1993-1994) x 1.2	775
15 hours x \$210 (1992-1993) x 1.2	3,780
224.5 hours x \$200 (1991-1992) x 1.2	53,880
522 hours x \$190 (1990-1991) + \$25	112,230
244 hours x \$175 (1988-1990) + \$25	48,800
90.75 hours x \$160 (1987- 1988) + \$25	<u>16,789</u>
Subtotal	\$248,476
Other costs, including postage, telephone, copying	<u>\$ 11,581</u>
Total	\$260,057

**5.1. Hours Claimed**

In its amended filing, TURN states all of the work for which TURN seeks compensation in this proceeding was performed by M.P. Florio, who is an attorney and who served as both attorney and technical staff on behalf of TURN. TURN's pleading presents a list of the hours spent in the proceeding according to issue.

The topics which are within the scope of this proceeding are broad, including all types of issues relating to industry restructuring and utility ratemaking. These topics have been the subject of hearings, settlements, and

comments over a period of ten years. Our rules provide that compensation requests must be filed within 60 days of a "final" order in a given proceeding. Because of the ongoing nature of this proceeding, the "final" order may be considered to be D.98-06-082, as TURN suggests. TURN's interpretation of the rule is reasonable. Because of the amount of time that has elapsed since TURN's early participation in this proceeding, however, this interpretation handicaps the Commission in its review of a compensation request and handicaps the party requesting compensation with regard to drafting a compelling compensation request. With the passage of time, memories fade, records become more difficult to retrieve and interpret, and participating employees move on to other jobs. We have previously stated our willingness to consider compensation requests on an interim basis in cases where a proceeding may continue for a long period, that is, a party may seek compensation after the issuance of only a single order in a case where many orders may be issued. The need for interim compensations orders is likely to ease in the future because we intend to resolve rulemaking and ratesetting proceedings within 18 months in response to language included in SB 960.

In this particular case, Mr. Florio, whose participation was central to this proceeding over the entire ten-year period, is fortunately the same individual who signed the request for compensation and is presumably responsible for its veracity. Also fortunate is the fact that the same ALJ has been assigned to the proceeding for the past ten years and is familiar with the decisions for which TURN here seeks compensation.

Such conditions may not be present in other cases. For that reason, we encourage parties to seek compensation on a more timely basis. In cases



where proceedings are protracted, we encourage parties to file for interim relief after a major decision has been issued.

The assigned ALJ has reviewed the records TURN presented in its compensation request and concurs that the total amount of time requested by the TURN is reasonable in light of the extensive record developed in this proceeding over such a long period. We therefore base our compensation request on TURN's estimate of the hours spent on the proceeding.

## 5.2. Hourly Rates

Section 1806 requires the Commission to compensation eligible parties at a rate which reflects the "market rate paid to persons of comparable training and experience who offer similar services."<sup>4</sup>

TURN seeks funding for the work of a single attorney. The requested hourly amounts are those that have previously been approved by the Commission for each year in question with one exception. TURN seeks an increase for Mr. Florio's work in 1998 to \$290 an hour. TURN seeks the increased hourly rate for Mr. Florio in several other dockets for work during 1998. We have reviewed the request in made in Application (A.) 97-03-002, where TURN presents support for its requested hourly rate increase. TURN presents adequate justification for the increase, with market survey information to demonstrate that \$290 an hour is within the range of rates charged by Bay Area attorneys with Mr. Florio's experience.

It is customary to apply an "efficiency adder" to the rate of an attorney who appears also as an expert. The efficiency adder recognizes the

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<sup>4</sup> Cal. PUC § 1806.

much lower cost associated with having a single participant fulfill both roles. (See, for example, D.95-08-012.) TURN has appropriately proposed an efficiency adder for each year at levels which are consistent with the amounts we granted in other decisions for work undertaken during those years. For 1987-1991, the amount is \$25 an hour. For 1991-1994, the amount is 20% of the approved rate. TURN did not include the adders for work undertaken in the past year, most of which is requested for drafting this request for compensation. We adopt the efficiency adders proposed by TURN, recognizing that Mr. Florio's expertise in matters relating to the natural gas industry and the Commission's natural gas programs is extensive and makes him a highly efficient participant in related proceedings.

We adopt the requested hourly rates for Mr. Florio for periods preceding 1997 because we have already approved those rates in other decisions.

### **5.3. Other Costs**

The costs TURN claims for such items as postage, photocopying, and telephone calls are a small percentage of his request and are reasonable in light of the work accomplished in the proceeding.

### **5.4. Allocation Between Utilities**

TURN recommends the compensation awarded in this proceeding be allocated equally between PG&E and SoCalGas, arguing that most of TURN's participation was applicable to both and did not focus on issues related to SDG&E. None of the utilities objected to the allocation TURN proposes and we adopt it.

**6. Award**

We award TURN \$260,057 for its contributions to the various decisions in this proceeding which we have not heretofore ordered compensation.

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 3, 1998, the 75<sup>th</sup> day after TURN filed his compensation request and continuing until the utility makes its full payment of award.

**Findings of Fact**

1. TURN has made a timely request for compensation for its contributions to various decision in this proceeding and has made substantial contributions to those decisions as set forth herein.

2. TURN has requested hourly rates that have either already been approved by the Commission or may be considered market rates for individuals with comparable training and experience.

3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

**Conclusions of Law**

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

2. TURN should be awarded \$260,057 for its contributions to various decisions in this proceeding.

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 \$260,057 in compensation for its substantial contributions to the decisions listed in this order.

2. Pacific Gas and Electric Company shall pay TURN \$130,028.50 within 30 days of the effective date of this order plus 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 3, 1998, and continuing until full payment is made.

3. Southern California Gas Company shall pay TURN \$130,028.50 within 30 days of the effective date of this order plus 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 3, 1998, and continuing until full payment is made.

4. Investigation 87-03-036 and Case 89-05-016 are closed.

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners