

Decision 98-11-020 November 5, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Standards of Conduct Governing Relationships
Between Energy Utilities and Their Affiliates.

Rulemaking 97-04-011
(Filed April 9, 1997)

Order Instituting Investigation to Establish
Standards of Conduct Governing Relationships
Between Energy Utilities and Their Affiliates.

Investigation 97-04-012
(Filed April 9, 1997)

ORIGINAL

OPINION AWARDING COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of \$51,835.30 in compensation for its contribution to Decision (D.) 97-12-088.

Background

Decision (D.) 97-12-088 adopts detailed, new rules governing the relationship between California's natural gas local distribution companies, electric utilities and certain of their affiliates. The rules address nondiscrimination, disclosure, information, and separation standards. They also address to what extent a utility should be required to have its nonregulated or potentially competitive activities conducted by an affiliate.

A synopsis of the procedural history follows. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII). The OIR/OII encouraged parties to work cooperatively to develop proposals. Following a prehearing conference and pursuant to direction in the OIR/OII, on June 2, 1997, various parties, including the Joint

Petitioners Coalition (of which TURN was a member) and TURN (in its separate capacity), submitted proposals and comments. Comments on the proposals, filed on July 31, demonstrated that, even with the additional month of negotiation, the parties were unable to agree on many controversial issues. On August 15, a number of parties, including some who had not participated previously, filed comments. The Commission held oral argument on September 4, 1997 to consider the parties' proposals, comments and various motions filed during the course of the proceeding.

By a request timely filed February 17, 1998, TURN now makes a claim for compensation for its participation in this proceeding.

Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities 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 Section 1806.

Eligibility

By ruling dated June 10, 1997, Administrative Law Judge Janet Econome found that TURN was eligible to claim compensation in this proceeding, having filed its NOI on a timely basis and demonstrated significant financial hardship.

Contributions to Resolution of Issues

TURN represents that its participation "substantially enhanced" the record underlying the proposed decision, several alternate decisions, and ultimately, D.97-12-088; that it participated both through the Joint Petitioners Coalition and separately, without duplication of effort; and that this participation included all aspects of the proceeding, including negotiations with the utilities.

D.97-12-088 adopts a very limited number of party proposals without modification. However, as TURN accurately contends, many aspects of our final rules were significantly influenced by the ideas and arguments of the Joint Petitioners Coalition, a consortium of competitor and consumer interests of which TURN was an active member. TURN fairly identifies the following areas where this impact on our final rules was most significant (references are to D.97-12-088): the definition of affiliate (p. 21); nondiscriminatory discounting

(p. 27); release of customer information (p. 31); exchange of operating, marketing, and proprietary information (pp. 33-34); customer referrals (p. 36); reporting requirements (p. 38); joint marketing (p. 50); corporate support (p. 57); employee sharing (pp. 62-63); research and development activities (pp. 67-68); transfer pricing (p. 69); and asset transfers (p. 70).

In its separate capacity, TURN, together with ORA, advocated a ban on affiliate activities within the utility service territory. Though we declined to adopt this proposal in D.97-12-088, TURN argues we should award compensation for its participation on this issue nonetheless, since the Assigned Commissioners were persuaded to draft an alternate decision incorporating a ban. As TURN notes, it is our policy that "...where the Commission does not wholly adopt the customer's position, contribution to an ALJ's proposed decision reinforces a substantial contribution to an order or decision." (D.92-08-030, mimeo., p. 4.) TURN argues that this policy logically should extend to a commissioner's alternate decision. We agree.

On balance, we find that TURN made a substantial contribution to D.97-12-088.

The Reasonableness of Requested Compensation

TURN requests compensation in this proceeding as follows:

Attorney Fees

Michel Peter Florio	(62.5 hours at \$260/hr)	\$ 1,625.00
Theresa Mueller	(188.75 hours at \$195/hr)	\$ 36,806.25
Paul Stein	(78.25 hours at \$160/hr)	\$ 12,520.50
	Subtotal	\$ 50,951.25

Other Reasonable Costs

Photocopying expense	\$ 665.40
Postage costs	\$ 205.15
Long Distance Telephone Charges	\$ 57.73
Fax charges	\$ 104.77
Lexis research	\$ 3,259.00
Attorney Expenses (Travel)	\$ 652.00
Subtotal	\$ 4,944.05
Total Costs	\$55,895.30

Hours Claimed

TURN participated in all aspects of the OIR/OII throughout the duration of the proceeding. TURN's compensation request includes detailed time records for Michel Florio, Paul Stein, and Theresa Mueller, and describes the activities of each by date and time expended. TURN documents Mr. Florio's participation from April 4 through October 21, 1997; Mr. Stein's from March 3 through December 1, 1997; and Ms. Mueller's from January 8, 1997 through February 1, 1998. TURN properly has excluded time spent by Ms. Mueller on media-related activities.

TURN's claim does include time for all three attorneys prior to issuance of the OIR/OII on April 9, 1997. However as D.97-12-088 recognizes, TURN and six other parties, by motion filed in our Electric Restructuring docket in December 1996, made a persuasive case that this proceeding should be opened. TURN did not request compensation there for time spent on this matter, but elected to file here, instead. (See D.98-10-030.) We agree that TURN's attorneys should be compensated for time spent on affiliate rules-related work prior to issuance of the OIR/OII. Consequently, we will make no adjustment to TURN's request in this respect.

However, we will reduce by one half the 22 hours (out of 273.25 total hours) that TURN reports for preparation of its request for compensation. In D.96-08-040, though we allowed TURN's request for 33.5 hours of claim preparation time, we warned that request was at the "outer limits" of reasonableness for a claim that totaled nearly 3,000 hours. (D.96-08-040, mimeo., p. 56.) Considering the shorter duration of this proceeding and the content of the compensation request (which argued compensation policy issues we were addressing in our intervenor compensation OIR/OII), we find that 22 hours for preparation is excessive. Eleven hours is more reasonable because it ensures ratepayers are only funding TURN's participation on issues relevant to this proceeding.

In all other respects we find reasonable the number of hours for which TURN seeks compensation.

Hourly Rates

TURN requests an hourly rate of \$260 per hour for the work of attorney Michel Florio and \$195 per hour, for attorney Theresa Mueller. We adopted those rates for each of them in D.97-12-076 for work performed during the 1996-1997 fiscal year and will apply those rates here, with one exception. We decline to award compensation at Ms. Mueller's full hourly rate for the 22 hours spent preparing the compensation request. We have held in numerous prior decisions that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare. (See, for example, D.86-09-046, D.92-04-042, D.93-09-086, and D.98-04-059.) Where an attorney has prepared a request, we have generally reduced the attorney's rate by one-half. We will allow \$97.50 per hour for preparation of the request.

Finally, TURN requests that we establish a rate of \$160 per hour for the work of attorney Paul Stein. In D.98-08-016, which issued after TURN's filing for

compensation in this proceeding, we set the 1997 rate for Mr. Stein at \$170 per hour. We will apply that rate here.

Other Costs

As TURN admits, its \$3,295.00 cost for Lexis research is larger than usual. However, we accept TURN's argument that using a computerized database in many instances was the only means of researching decisions in other jurisdictions on affiliate issues. We find that TURN's other miscellaneous expenses, including photocopying, postage, and travel, incurred during its participation in this proceeding are reasonable and should be compensated in full.

Award

We award TURN \$51,835.30. This award is summarized below:

Attorney Fees

Michel Peter Florio	(62.5 hours at \$260/hr.)	\$ 1,625.00
Theresa Mueller	(166.75 hours at \$195/hr.)	\$ 32,516.25
	(11 hours at \$97.5/hr. for preparation of compensation request)	\$ 1,072.50
Paul Stein	(78.25 hours at \$170/hr.)	\$ 13,302.50
	Adjusted Subtotal	\$ 46,891.25

Other Reasonable Costs

Photocopying expense	\$ 665.40	
Postage costs	\$ 205.15	
Long Distance Telephone Charges	\$ 57.73	
Fax charges	\$ 104.77	
Lexis research	\$ 3,259.00	
Attorney Expenses (Travel)	\$ 652.00	
	Subtotal	\$ 4,944.05
	Adjusted Total Costs	\$51,835.30

We will assess responsibility for payment among Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and the Southern California Gas Company in proportion to their total recorded Commission jurisdictional revenues for 1997. (See, D.98-02-010, mimeo., p. 11; D.98-04-059, mimeo., p. 55-59.)

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 May 3, 1998 (the 75th day after 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'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 has made a timely request for compensation for its contribution to D.97-12-088.
2. By ruling dated June 10, 1997, Administrative Law Judge Janet Econome found that TURN was eligible to claim compensation in this proceeding, having filed its NOI on a timely basis and demonstrated significant financial hardship.
3. On balance, TURN contributed substantially to D.97-12-088, both as a member of the Joint Petitioners Coalition and in its separate capacity, and this dual participation did not result in an unreasonably duplicative effort.
4. It would be reasonable to compensate TURN for its costs of preparation and participation in the proceeding underlying D.97-12-088.

5. TURN's compensation claim includes 22 hours at the full rate of \$195/hour for time its attorney spent preparing the claim.

6. In D.96-08-040, though we allowed TURN's request for 33.5 hours of preparation time, we warned that it was at the "outer limits" of reasonableness for a claim that totaled nearly 3,000 hours.

7. We should reduce by one half the number of hours TURN claims for preparation of its compensation claim because ratepayers should only fund argument on issues relevant to this proceeding.

8. In prior decisions we have held that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare; consequently, we have reduced a lawyer's rate by one-half.

9. We should reduce by one half the full hourly rate requested for the time TURN's attorney spent preparing its request for compensation.

10. TURN requested hourly rates for attorneys Michel Florio and Theresa Mueller that are no greater than the market rates for individuals with comparable training and experience, and we have allowed these rates previously.

11. We should allow an hourly rate of \$170 per hour for attorney Paul Stein; this rate is no greater than the market rate for individuals with comparable training and experience and is consistent with our prior decision setting a rate for Mr. Stein.

12. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has been found eligible to claim compensation in this proceeding.
2. TURN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

3. We will allow 11 hours of the time TURN's attorney spent preparing its request for compensation and will award compensation at \$97.70 per hour, or one half of the attorney's full rate.

4. TURN should be awarded \$51,835.30 for its contribution to D.97-12-088.

5. 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 \$51,835.30 in compensation for its substantial contribution to Decision 97-12-088.

2. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and the Southern California Gas Company shall pay TURN \$51,835.30 within 30 days of the effective date of 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 May 3, 1998, and continuing until full payment is made. Payment shall be allocated among the utilities in proportion to their total recorded Commission jurisdictional revenues for 1997.

This order is effective today.

Dated November 5, 1998, San Francisco, California.

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