

Decision 98-11-045 November 19, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion for purposes of compiling the Commission's rules of procedure in accordance with Public Utilities Code Section 322 and considering changes in the Commission's Rules of Practice and Procedure.

Rulemaking 84-12-028
(Filed December 19, 1984)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$9,474 in compensation for its substantial contributions to Decision (D.) 97-11-021 and D.97-12-043. TURN's substantial contributions were not significantly duplicative of contributions made by other parties.

1. Background

Both D.97-11-021 and D.97-12-043 revise the Public Utilities Commission's Rules of Practice and Procedure in accordance with Senate Bill (SB) 960 (Leonard, Ch.96-0856). The background to the development of these rules is detailed in D.97-07-065 and Resolutions ALJ 170 (January 13, 1997) and ALJ 171 (March 18, 1997). Senate Bill 960 mandates significant changes in the rules for conducting hearings before the Commission. D.97-11-021 revises some of the rules after receiving written comment on drafts of the final rules and solicits further comment. D.97-12-043 adopts the final rules, effective on January 1, 1998.

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 judgement 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 of 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(3) 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 and Request to Claim Compensation

TURN timely filed its NOI after the first prehearing conference and was found to be eligible to request compensation in this proceeding by a ruling dated July 9, 1993. TURN filed this request February 3, 1998. The request is timely

since it was filed within 60 days of issuance of D.97-12-043, which closed this docket. GTE California Incorporated (GTEC) filed a timely response to TURN's request. GTEC's response only addressed responsibility for payment of any award.

4. Contributions to Resolution of Issues

The two decisions (D.97-11-021 and D.97-12-043) address comments and revisions to the draft rules and procedures proposed for comment by the Commission in D.97-07-065. TURN contends that it made a substantial contribution to the revised rules adopted in D.97-11-021 and D.97-12-043 through both its written comments (dated December 10, 1996 and September 15, 1997) and its active participation in several SB 960 workshops conducted by the Commission.

TURN claims that the final rules adopted by the Commission reflect the following modifications that it provided the Commission in its oral and written comments:

1. Rule 6.4 reflects adoption of TURN's position that appeals to the initial decision on case categorization should occur only after the issuance of the Assigned Commissioner's scoping memo.
2. The addition of the words "formally organized" to Rule 5(h)(3), regarding ex parte communications, reflects TURN's concern that the original version of the Rule was too broad.
3. Rule 6.1(c) establishes "ratesetting" as the appropriate category in situations where the proceeding does not fit neatly into one of the existing three categories, a position strongly advocated by TURN.
4. Rule 6.2 reflects TURN's suggestion that submission of prehearing conference statements should be permissive rather than mandatory in all cases.

5. Elimination from the final rules of a requirement, in certain circumstances, for notice of ex parte communication within one working day.
6. Consistent with TURN's comments, the Commission adopted a definition of commissioner "presence" that requires a physical presence in most circumstances.
7. In D.97-11-021 (pp. 13-14), the Commission adopted several points of clarification to the Rules that TURN had recommended in its written comments dated September 15, 1997 (pp. 8-13).

A review of the record, D.97-11-021, and D.97-12-043, supports TURN's claim that the rules implementing SB 960 reflect the comments and modifications noted above. These comments and modifications advocated by TURN and adopted by the Commission represent a substantial contribution to D.97-11-021 and D.97-12-043.

In particular, TURN's suggested revision to Rule 6.4 was an important and substantial procedural modification to the rules that eliminated the potential for the unnecessary filing of appeals prior to the prehearing conference. No other party noted this shortcoming in the draft rules. TURN's points of clarification in item 7 above were another original and important contribution.

Some of TURN's other recommendations - e.g, establishing ratesetting as the appropriate category for proceedings of mixed category and the notice requirements regarding ex parte communications - were duplicative of recommendations made by other parties, but this does not diminish the significance of TURN's comments and contributions. Indeed, receiving similar comments from different parties in a rules revision effort is an important component of the comment and revision process. Overlapping comments by different parties may indicate the need for additional revision.

We conclude that TURN made a substantial contribution to D.97-11-021 and D.97-12-043 by providing useful comments to the proposed and final rules implementing SB 960.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$10,506 as follows:

Attorney's Costs

M.P. Florio	(36.50 hours at \$275/hr.)	\$10,038.00
-------------	----------------------------	-------------

Other Costs

Photocopying	\$346.00	
Postage	\$107.00	
Attorney Expenses	\$ 15.00	
Other Costs Subtotal		\$ 468.00
Total Compensation Requested		\$10,506.00

5.1. Hours Claimed

TURN explains that the hours claimed in this request represent only the work spent on issues resolved in D.97-12-043, and this request does not include time spent on other issues relevant to Rulemaking (R.) 84-12-028. In addition, the request excludes time spent by Mr. Florio preparing a request for rehearing on D.97-12-043 and time spent by other TURN staff members on issues pertaining to D.97-11-021 and D.97-12-043. Finally, TURN notes that since these two decisions involved primarily legal issues, Mr. Florio is only claiming compensation for his role as an attorney, and not as a technical expert.

In Appendix A, TURN provides a detailed breakdown of the hours Mr. Florio spent on each task, which includes reviewing draft SB 960 rules, preparing written comments, attending SB 960 workshops, and preparing the request for compensation. TURN claims that Mr. Florio spent 7.5 hours out of a total 36.5 hours preparing this compensation request, which may be a bit high for

a basic compensation request. In general, however, the hours claimed by TURN appear reasonable for the effort that Mr. Florio contributed to resolving the issues in D.97-11-021 and D.97-12-043.

5.2. Hourly Rates

TURN is claiming an hourly rate of \$275 for Mr. Florio's work as an attorney. This rate was adopted in an earlier decision by the Commission (D.97-12-076). The rate, however, is reduced by 50% for the time spent preparing the request for intervenor compensation. This action is consistent with previous decisions by the Commission (see e.g., D.97-12-076) holding that compensation requests are essentially bills for services and do not require the skills of an attorney to prepare.

5.3. Other Costs

TURN requests \$468 for photocopying, postage, and attorney expenses. TURN provides a breakdown of these expenses in Attachment 1. The \$15 claimed for attorney expenses is for parking. TURN's request for other costs are reasonable.

5.4. Award

We award TURN \$9,474, 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 April 19, 1998, and continuing until full payment of award.

As in all Intervenor compensation decisions, we put TURN on notice that the Commission may audit their 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.

We will assess responsibility for payment of the award equally among the four large energy utilities (Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and San Diego Gas and Electric Company) and the two telecommunications utilities (Pacific Bell and GTEC), per the method first adopted in D.95-09-034 and applied most recently in D.96-02-035. GTEC recognizes that its share of the award payment will be quite small but it believes it is inappropriate and inequitable for only two of the many telecommunications utilities to be singled out. It acknowledges that the Commission is generally addressing this question of broadening responsibility for payment of awards in R.97-01-009/Investigation 97-010. (See D.98-04-059.) The remedy for the inequity GTEC identifies lies in the latter rulemaking and investigation. D.97-12-043 closed this docket, R.84-12-028, and so we expect that this method of assessing responsibility for payment of awards in future rules revision dockets will not be applied.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.97-11-021 and D.97-12-043.
2. TURN contributed substantially to D.97-11-021 and D.97-12-043 by providing useful comments that the Commission used in revising the draft SB 960 rules.
3. Any duplication of effort by TURN was minor.

4. The hourly rate requested by TURN for Mr. Florio's work as an attorney was previously adopted as reasonable by the Commission and should be applied here.

5. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

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

2. The rate of compensation for Mr. Florio's effort (7.5 hours) in preparing the application for compensation is reduced by 50%. The award in this decision reflects this adjustment.

3. TURN should be awarded \$9,474 for its contribution to D.97-11-021 and D.97-12-043.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

5. Since all outstanding work in this docket has been completed, it should be re-closed.

O R D E R

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is awarded \$9,474 in compensation for its substantial contribution to Decision (D.) 97-11-021 and D.97-12-043.

2. Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and San Diego Gas and Electric Company, and the two telecommunications utilities, Pacific Bell and GTB California Incorporated shall each pay TURN \$1,579 within 30 days of the effective date of

this order. Each utility 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 April 19, 1998 and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

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