

Decision 98-12-006 December 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking for Electric
Distribution Facility Standard Setting.

Rulemaking 96-11-004
(Filed November 6, 1996)

ORIGINAL

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$27,060.91 in compensation for its contribution to Decision (D.) 98-03-036 and D.98-07-097 which adopted standards for electric utility planning for and responses to emergency situations.

1. Background

We initiated this rulemaking for the purpose of developing guidelines and rules to govern service reliability and maintenance of the electric distribution system. Following our adoption of such rules and consistent with Assembly Bill (AB) 1890, we proceeded to consider rules more specifically concerned with planning for and responses to system emergencies. Following workshops, several parties filed a settlement proposing a set of rules to resolve these matters. We subsequently issued D.98-03-036 proposing a set of rules and implicitly rejecting the rules proposed by the settlement. Following comments by the parties, we issued D.98-07-097 which adopted rules substantially similar to those proposed by the settlement. We also stated an intent to develop a more complete record on three issues raised by parties who were not proponents of the settlement. We are currently in the process of considering those remaining issues.

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 did not file an NOI to claim compensation in this proceeding because the Commission did not hold a prehearing conference or determine a procedure to be used in filing an NOI pursuant to Section 1804(a)(1). By this decision, we find that TURN's request for compensation incorporates the elements of an NOI and, because the Commission set no deadline for filing an NOI in this proceeding, is timely.

TURN makes a convincing case that it qualifies for compensation in this proceeding as a customer that would experience significant financial hardship as a result of its participation in this proceeding, consistent with Section 1802(b). Moreover, several rulings issued since the initiation of this rulemaking have found TURN eligible for compensation. (See, for example, ruling dated February 25, 1997 issued in Application (A.) 96-10-038 and ruling dated January 8, 1998 issued in A.97-10-014).

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in three ways.¹ He may offer a factual or legal contention upon which the Commission relied in making a decision.² Or he may advance a specific policy or procedural recommendation that the Administrative Law Judge (ALJ) or Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's

¹ Cal. PUC § 1802(h).

² *Id.*

³ *Id.*

position in total.⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁵

TURN made a substantial contribution to D.98-03-036 and D.98-07-097. The proposed rules in D.98-03-036 included several of TURN's recommendations. Although they were not ultimately adopted, the Commission has found that an intervenor's contribution to a final decision may be supported by contributions to the ALJ's proposed decision even where the Commission's final decision does not adopt that portion of the proposed decision which finds in favor of the intervenor on the relevant issue. (See, for example, D.97-02-048.)

TURN was an active participant in the development of the settlement (also referred to as the "Joint Proposal"). Although the final rules adopted by D.98-07-097 were not identical to those proposed by the settlement, they differed very little in substance and varied otherwise only cosmetically. TURN observes that it supported those rules, although it proposed several others. The decision stated an intent to conduct hearings to explore two of these – one addressing call center standards and the other a standard for acceptable restoration times during emergencies.

We find that TURN made a substantial contribution to D.98-03-036 and D.98-07-097.

⁴ *Id.*

⁵ 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).

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$27,060.91 as follows:

| | |
|--|-------------|
| Robert Finkelstein, Attorney: 31.5 hours x \$235 | \$ 7,402.50 |
| M.P. Florio, Attorney: 1.25 hours x \$275 | \$ 343.75 |
| William Marcus, JBS Energy 5.25 hours x \$145 | \$ 761.25 |
| Gayatri Schilberg, JBS Energy 160.5 hours x \$105 | \$16,852.50 |
| JBS Expenses | \$ 312.68 |
| TURN Expenses | \$ 1,388.23 |
| Total | \$27,060.91 |

5.1. Hours Claimed

In its filing, TURN explains that Mr. Finkelstein was the lead attorney in this case. TURN did not allocate work activities on the basis of issue because the scope of this part of the proceeding was narrowly defined. The hours claimed for JBS Energy experts are mainly for attending workshops and commenting on proposals.

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."

TURN seeks funding for the work of two attorneys and two consultants. TURN seeks compensation for Michel Florio at an hourly rate of

* Cal. PUC § 1806.

\$275 for work undertaken in 1997-1998. The rate has been approved for that period in other Commission decisions. (See, for example, D.97-12-076, D.98-04-027 and D.98-04-028.) We, therefore, apply the rate here. TURN seeks \$235 an hour for Mr. Finkelstein's work during 1997-1998, a rate the Commission awarded in D.98-04-028. The Commission's general policy regarding attorney's rates for preparation of compensation requests is laid out in D.98-04-059. Generally, except where the claim involves technical legal analysis, compensation is granted at 50% of the attorney's hourly rate. In light of the small number of hours and apparent high efficiency in this case, we will not reduce Mr. Finkelstein's rate.

TURN bills a total of \$17,926.43 for the work of two consultants representing JBS Energy. Both are expert witnesses and TURN states the amounts requested are those billed by JBS Energy. TURN observes the rates for both Ms. Schilberg and Mr. Marcus have been approved in other Commission decisions. (See, for example, D.98-04-027 and D.98-08-027.)

We have previously approved the hourly rates TURN requests for its attorneys and consultants and we will apply them here in our final award.

5.3. Other Costs

TURN claims \$1700.91 for such items as postage, photocopying and telephone calls. This amount is reasonable in light of the work accomplished in the proceeding and considering the number of pleadings TURN submitted.

6. Award

We award TURN \$27,060,91 for its contributions to D.98-03-036 and D.98-07-97.

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 December 9, 1998, the 75th day after TURN filed this

compensation request and continuing until the utility makes its full payment of award.

7. Allocation of Award Among Utilities

TURN proposes that the same allocation formula be applied as that adopted by the Commission in other compensation orders issued in electric industry restructuring (R.94-04-031), that is, according to each utility's share of total retail sales of electricity in California in 1997, measured in kilowatt hours. (See Ordering Paragraph 2, D.96-08-040). We adopt this allocation

Findings of Fact

1. TURN has made a timely request for compensation for its contributions to D.98-03-036 and D.98-07-079 as set forth herein.
2. TURN requests hourly rates for its attorneys and consultants that have already been approved by the Commission.
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 govern awards of intervenor compensation.
2. TURN should be awarded \$27,060.91 for its contributions to D.98-03-036 and D.98-07-079 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 \$27,060.91 in compensation for its substantial contributions to Decision (D.) 98-03-036 and D.98-07-079.
2. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Sierra Pacific Power Company and PacificCorp shall, within 30 days of this order, pay TURN that pro rata portion of TURN's award equal to each utility's percentage of the sum of the retail kilowatt-hours of electricity sold by the utilities in 1997, plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on December 9, 1998, and continuing until the full payment has been made.
3. This proceeding remains open to consider those matters identified for review in D.98-07-079.

This order is effective today.

Dated December 3, 1998, at San Francisco, California.

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