

Decision 00-01-048 January 20, 2000

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

Order Instituting Rulemaking on the  
Commission's Own Motion to Consider the Line  
Extension Rules of Electric and Gas Utilities.

Rulemaking 92-03-050  
(Filed March 31, 1992)

**OPINION**

This decision grants The Utility Reform Network and Utility Consumers Action Network, jointly referred to as TURN,<sup>1</sup> an award of \$94,173.35 in compensation for its contribution to Decision (D.) 97-12-098 and Resolution E-3576, addressing future treatment of the cost of transformers, meters, regulators and services provided by the utility at no cost to the applicant.

**Background**

In 1996, the Commission identified several issues to be addressed in this proceeding (D.96-06-031). Included was TURN's proposal that the cost of the transformers, service and meter and meter equipment provided by the utility to an applicant should be included as costs that will be covered by line extension allowances only to the extent that they are revenue-justified.

Following several workshops, evidentiary hearing was held on October 16, 1997. Prepared testimony was served by Jeff Nahigian of JBS Energy, Inc. (Exhibits 22, 23, 24 and 25). Also, testimony was served by the utilities. This issue was submitted following the filing of briefs on October 31, 1997.

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<sup>1</sup> The reference to TURN alone refers to the joint efforts of both organizations.

In April and May of 1998, each of the four major California investor-owned energy utilities<sup>2</sup> submitted advice letters seeking to implement the changes adopted in D.97-12-098. TURN devoted substantial time and resources to work on those advice letters. On May 13, 1999, the Commission approved Resolution E-3576, which addressed implementation of the advice letters.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Sections 1801-1812 of the Public Utilities Code. Section 1804(a)<sup>3</sup> 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 the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI 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

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<sup>2</sup> Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (Edison) and Southern California Gas Company (SoCalGas).

<sup>3</sup> Unless otherwise stated, all statutory references are to the Public Utilities Code.

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.

### **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 an ALJ's ruling dated January 27, 1995. The same ruling found that TURN had demonstrated significant financial hardship. Pursuant to Rule 76.76 of the Commission's Rules of Practice and Procedure, this earlier finding of eligibility applies to later phases of the same proceeding.

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

A party may make a substantial contribution to a decision in several ways.<sup>4</sup> It may offer a factual or legal contention upon which the Commission

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<sup>4</sup> Pub. Util. Code Section 1802(h).

relied in making a decision,<sup>5</sup> or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>6</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>7</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>8</sup>

TURN was the primary proponent of the proposals adopted in D.97-12-098, wherein the Commission adopted three modifications to the existing line and service extension rules and practices. The first was the treatment of the cost of transformers, meters, regulators and services (TSM). The existing practice was to have this equipment provided by the utility at no additional cost to the applicant for the line or service extension. TURN proposed to have the cost of this equipment covered by allowances, so that existing ratepayers would subsidize those costs only to the extent that they are "revenue-justified," that is, would be recovered in revenues subsequently collected through the rates paid by the new customer. (Exhibits 22 and 25.) The Commission adopted that proposal. It also specifically rejected the argument that Assembly Bill (AB) 1890 precludes such changes to line and service

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</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).

extension allowances during the rate freeze period, explicitly relying in large part upon arguments made in TURN's brief. (D97-12-098, pp. 31-33.)

The second modification the Commission adopted in D.97-12-098 was the use of distribution-based revenues for calculating allowances, rather than the revenues reflecting "bundled" rates. Again, the Commission adopted TURN's proposal (Exhibits 23 and 25), finding that it would achieve greater economic efficiency and consistency with the rate unbundling adopted in D.97-08-056. (D.97-12-098, pp. 16-17.)

The third modification adopted in D.97-12-098 was the establishment of a mechanism to allow changes adopted in relevant decisions from other Commission proceedings to flow through to the calculations of line and service extension allowances without keeping this rulemaking open, or initiating a new proceeding. (D.97-12-098, pp. 17-19.) The decision adopts TURN's proposal on this point as well (Exhibit 25), specifically agreeing with its argument that the utilities should be allowed to make such a change where it is a matter of inserting numbers adopted in a different proceeding into the already-approved formula.

Another significant issue in this proceeding was the analysis required under Section 783. There was no dispute that the Commission would have to make findings as specified in that statute on TURN's proposal regarding the TSM equipment. However, there was an open question as to whether the transition to distribution-based allowances constituted a ministerial change such that no Section 783 analysis was required.

TURN prepared a proposed Section 783 analysis that covered both general proposals. The Commission adopted that proposed analysis, setting it forth verbatim (as bolstered by PG&E's testimony and briefs) in the text of the decision. (D.97-12-098, pp. 25-31.)

We agree the Commission adopted TURN's proposals and recommendations in their entirety, and embraced TURN's reasoning and arguments. The findings of fact, conclusions of law, and ordering paragraphs of D.97-12-098 often refer specifically to the TURN recommendations and proposals. TURN's compensation with regard to D.97-12-098 should not be reduced for duplication of the showings of other parties. There was very little duplication at all, since TURN was the primary advocate of the positions adopted by the Commission.<sup>9</sup>

Regarding TURN's contribution to Resolution E-3576, TURN filed a protest to the advice letters filed by PG&E, SDG&E, Edison and SoCalGas. TURN was able to reach agreement with the utilities on the majority of issues identified in those four protests. For example, SDG&E's advice letter had originally proposed residential allowances of \$1,381 for electric service, and \$1,154 for gas service. Based on TURN's protest and further discussions between the parties, these allowances were reduced to \$1,170 and \$1,142, respectively. (Resolution E-3576, p. 6.) Similar adjustments were made to PG&E's proposed allowances after discussions between TURN and the utility. These agreed-to modifications to the calculation of the allowances, and the resulting fixed residential allowance, represent a substantial contribution by TURN.

TURN was also able to work out an agreed-to change to the contract termination language that Edison proposed including in a form associated with line extensions. TURN pointed out that the language in question could be

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<sup>9</sup> The Office of Ratepayer Advocates (ORA), the consumer representative with whom duplication issues typically arise, was not an active party in this proceeding for a number of years.

interpreted to prevent recipients of line or service extension allowances from having their electrical requirements served by non-Edison providers. Edison agreed with TURN, and made a minor but important revision to the form. (Resolution E-3576, p. 18.)

On two issues raised in its protest, TURN agreed to withdraw its opposition at this time. First, in D.97-12-098, the Commission determined that the revenue-based allowances should cover both line and service extension equipment, so that equipment covered by Tariff Rules 15 and 16 would be subject to the allowance. The utilities all proposed to apply the allowance to Tariff Rule 16 costs first, with any remainder covering Tariff Rule 15 costs. TURN's protest opposed this position, largely because the reasoning supporting that position was, to TURN's view, inadequately presented. The utilities provided further explanation, after which TURN withdrew its opposition and instead adopted a "wait and see" position to determine if the utilities' contention that the allocation would not change the outcome in any important way turned out to be correct in practice. Second, TURN protested the cost-of-service factor used by Edison, as TURN contended that the utility had a more appropriate cost-of-service factor to apply. However, again after further discussion with the utility, TURN withdrew that aspect of its protest because of Edison's colorable claim that it was using the correct factor, and because a dispute over the calculation of that factor might be more appropriately litigated in other, future forums.

We agree TURN made a substantial contribution to Resolution E-3576 on those issues on which it was able to settle with the utilities.

On those issues that remained disputed until the Commission issued the resolution, the most contentious issues were those raised in the SoCalGas advice letter. These turned out to be the issues on which TURN had the least success

resolving its differences with the utility. Therefore, the Commission determined the appropriate outcome based on the litigation positions of the parties.

TURN had raised three major objections to SoCalGas' advice filing; the Commission adopted TURN's proposed outcome on two of them. First, where SoCalGas had sought to create 62 separate residential allowances, the Commission directed the utility to calculate an allowance for each of the five end-uses under both gas main and service extensions. (Resolution E-3576, pp. 24-25.) Second, the Commission agreed with TURN in rejecting SoCalGas' proposal to reallocate the end-use allowances between mains and services. (*Id.*, pp. 25-26.) Third, TURN had urged the Commission to direct SoCalGas to recalculate its allowances using the adopted cost of service factor of 1.921% per month. The Commission did not adopt TURN's third proposal, finding instead that the matter was beyond the scope of issues addressed in D.97-12-096.

We agree TURN made a substantial contribution to the outcome of the disputed issues addressed in Resolution E-3576. TURN was the only consumer representative who was active in the matter of the advice letters that led to the issuance of Resolution E-3576. Therefore, the issue of duplication of effort does not apply to this part of TURN's request for compensation. (Section 1802.5.)

#### **5. Reasonableness of Requested Compensation**

For its contribution to D.97-12-098, TURN requests compensation in the amount of \$78,316.43 as follows:

Attorney and Expert Witness Fees

Robert Finkelstein	9.75 hours X \$220 = \$ 2,145.00
	128.75 hours X \$235 = \$30,256.25
Michel P. Florio	0.75 hours X \$275 = \$ 206.25
	Subtotal = \$32,607.50

Expert Witness Fees and Expenses <sup>10</sup>

JBS ENERGY INC.

William Marcus	9.50 hours X \$140 = \$ 1,330.00
Jeff Nahigian	474.50 hours X \$ 80 = \$ 37,960.00
Gayatri Schilberg	4.25 hours X \$100 = \$ 425.00
Greg Ruzzovan	1.00 hours X \$ 80 = \$ 80.00
Steve Helmich	7.40 hours X \$ 45 = \$ 333.00
JBS Expenses	\$ 1,243.41
	JBS Subtotal = \$41,371.41

Other Reasonable Costs

Photocopying expense	= \$ 3,285.20
Postage costs	= \$ 598.57
Fax charges	= \$ 168.29
Federal Express charges	= \$ 90.50
Phone expense	= \$ 125.96
Lexis Research	= \$ 69.00

Subtotal	= \$ 4,337.52
Total	= \$78,316.43

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<sup>10</sup> See TURN's July 19, 1999 supplement.



TURN includes 6.5 hours for Attorney Finkelstein's preparation of its fee request pleading. TURN states that the ability to produce its pleading in this small number of hours is a direct product of its attorney's extensive familiarity with the issues and record in this proceeding. According to TURN, a person with a lower billing rate than TURN's attorney might have been able to prepare portions of the pleading; however, the increase in that hours would have offset any cost reduction through the lower rate.

Also, TURN states that consistent with its normal billing practice, TURN has billed for only half the time spent on traveling in relation to this case.

We agree that TURN's request regarding preparation of its fee request and its request for travel time is reasonable.

## **5.2 Hourly Rates**

TURN states that the hourly rates requested for its Attorneys Robert Finkelstein and Michel P. Florio, and the hourly rates for JBS Energy, Inc. employees are consistent with those already approved by the Commission in prior decisions.

Our review of the decisions cited by TURN supports this contention. Accordingly, we find that the requested hourly rates for TURN's attorneys and JBS Energy, Inc. staff are reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

TURN's request for \$4,337.52 and \$107.42 for ancillary expenses is reasonable, especially considering the amount of work involved in TURN's participation in this proceeding.

## **5.3 Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in

Section 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo., at 31-33, and Finding of Fact 42.) In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Unfortunately, TURN did not address the overall benefits to ratepayers of its participation relative to the compensation it requests. It is difficult to put a dollar figure on the benefits TURN realized for ratepayers. However, for example, the requirement adopted in D.97-12-098, that TSM equipment be covered by line extension allowances only to the extent that they are revenue-justified by the applicant for a line extension, provides savings through reduced rate base to ratepayers that outweigh the costs TURN claims for participation in this proceeding. We find TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.

## **6. Award**

We award TURN \$78,316.43, 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 October 2, 1999 (the 75<sup>th</sup> day after TURN filed its compensation request) and continuing until the utilities make full payment of the award.<sup>11</sup>

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<sup>11</sup> TURN's original request was filed on February 17, 1998, and its supplemental request was filed on July 19, 1999. Interest should accrue on the 75<sup>th</sup> day after July 19, 1999.

### **6.1 Manner of Payment of Award**

Regarding payment of the award for contribution to D.97-12-098, TURN recommends that the obligation be divided between the four major utilities according to their jurisdictional revenues for 1995 (as in D.98-02-010). TURN believes that such an allocation will fairly reflect the size differences of the utilities who were active in the rulemaking. We agree that such a result is reasonable.

TURN proposes a different allocation for payment of the award regarding Resolution E-3576 and related advice letters. TURN points out that an allocation based on jurisdictional revenues, as proposed above, would unfairly assign the majority of costs to Edison and PG&E, even though the SoCalGas advice letter was far more time-and-resource intensive than the advice letters for the other utilities. Accordingly, TURN proposes that the allocation be on the basis of equal shares to each of the four major utilities. We agree that, in this instance, such a result is reasonable (see D.95-09-034).

To minimize any administrative burden, TURN and UCAN request that the utilities be directed to pay their portion of any compensation award directly to TURN alone. TURN will then forward to UCAN its share of that award. UCAN agreed to this treatment. We agree.

As in all intervenor compensation decisions, we put TURN on notice that the Commission staff 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.

**7. Section 311(g)(2) – Uncontested decision grants relief requested**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Findings of Fact**

1. TURN has made a timely request for compensation for its contribution to D.97-12-098 and Resolution E-3576. TURN has made a showing of significant financial hardship by demonstrating that the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

2. TURN contributed substantially to D.97-12-098 and Resolution E-3576.

3. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

4. TURN has requested hourly rates for its attorneys and experts that have already been approved by the Commission.

5. The miscellaneous costs incurred by TURN are reasonable.

6. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.

**Conclusions of Law**

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

2. TURN should be awarded \$94,173.35 for its contribution to D.97-12-098 and Resolution E-3576.

3. To ensure prompt payment and avoid unnecessary interest expense, this decision should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network and Utility Consumers' Action Network, jointly referred to as TURN, are awarded a total of \$94,173.35 for their substantial contribution to Decision (D.) 97-12-098 and Resolution E-3576. The payment shall be made by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCalGas) as set forth below.

2. PG&E, SDG&E, Edison and SoCalGas shall pay an amount of \$78,316.43 to TURN for its substantial contribution to D.97-12-098. The amount shall be allocated among the utilities on the basis of their 1995 jurisdictional revenues.

3. PG&E, SDG&E, Edison, and SoCalGas shall pay an amount of \$15,856.92 to TURN for its substantial contribution to Resolution E-3576 and related advice letters. The amount shall be allocated equally among the utilities.

4. PG&E, SDG&E, Edison, and SoCalGas shall pay the above amounts within 30 days of the effective date of this order. The utilities shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as

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reported in Federal Reserve Statistical Release G.13, with interest beginning October 2, 1999, and continuing until full payment is made.

This order is effective today.

Dated January 20, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

CARL W. WOOD

LORETTA M. LYNCH

Commissioners