

Decision 00-02-036 February 17, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS AND ELECTRIC COMPANY (U 902 M) for Authority (i) to Increase Its Authorized Return on Common Equity, (ii) to Adjust Its Existing Ratemaking Capital Structure, (iii) to Adjust Its Authorized Embedded Costs of Debt and Preferred Stock, (iv) to Decrease Its Overall Rate of Return, and (v) to Revise Its Electric Distribution and Gas Rates Accordingly, and for Related Substantive and Procedural Relief.

Application 98-05-019
(Filed May 8, 1998)

And Related Matters.

Application 98-05-021
(Filed May 8, 1998)

Application 98-05-024
(Filed May 8, 1998)

O P I N I O N

This decision grants to three intervenors, The Utility Reform Network (TURN), Utility Consumers Action Network (UCAN), and James Weil, an award of \$92,901.19 in compensation for their contribution to Decision (D.) 99-06-057 in this proceeding. A single award is made jointly to all three intervenors in response to their request, to be allocated among them under the terms of a mutual agreement that is not a part of our record. Responsibility for payment of the award is allocated among Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric

Company (SDG&E) in accordance with their respective 1998 California jurisdictional revenues.

1. Background

This proceeding is the test year 1999 cost of capital proceeding for SDG&E, Edison, and PG&E. The three applications were filed May 8, 1998. D.99-06-057 was issued by the Commission on June 10, 1999, and mailed the following day, adopting test year 1999 costs of capital for all three applicants.

The Commission held workshops on unbundling the cost of capital in January and February 1998, before the three applications were filed. The workshops focused on the possible methods for unbundling, and were preliminary to the formal resolution of issues in D.99-06-057. Weil attended these workshops and participated on his own behalf.

During the prehearing stage of this proceeding PG&E filed a motion to defer the cost of capital proceeding, which TURN and UCAN opposed. On May 15, 1998, the assigned administrative law judge (ALJ) denied the motion.

Weil entered his appearance on behalf of these three intervenors on July 23, 1998, and TURN/UCAN filed a timely notice of intent (NOI) to claim compensation the same day. On August 17, 1998, the ALJ issued a ruling that TURN, UCAN, and Weil are all "customers" within the meaning of Pub. Util. Code § 1802(b), have made adequate showings of financial hardship, and have met the statutory eligibility requirements for compensation. In this decision we treat them collectively as a single intervenor. Hereinafter, unless the context

clearly refers to Weil's individual work, "Weil" will mean the three intervenors collectively.¹

The ALJ held formal evidentiary hearings lasting for 14 hearing days. Oral argument was conducted before the Commission on April 19, 1999. SDG&E and PG&E filed an application for rehearing of D.99-06-057, and Weil prepared a response, which TURN filed on behalf of all active parties other than the utilities. The Commission denied the request for rehearing.

2. Requirements for Awards of Compensation

An intervenor who seeks compensation for making a contribution in a Commission proceeding must file a request for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file an NOI to claim compensation within 30 days of the prehearing conference (PHC), 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 the procedure for making a request for compensation 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

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or

¹ This may not conform to D.99-06-057 or the practice of its author, as he tended to refer to all of these intervenors as "TURN."

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 § 1806.

2.1. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that an intervenor must demonstrate its participation was "productive," as that term is used in Pub. Util. Code § 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 say participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. An intervenor is directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of its participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Unfortunately, Weil has not addressed the overall benefits to ratepayers of his participation relative to the compensation request. These benefits are hard to quantify in this proceeding. Nevertheless, we find Weil's

participation was productive in that the costs claimed for participation were less than the benefits realized. Specifically, through Weil's participation the Commission had a record on which to assess the reasonableness of the utilities' positions in relation to ratepayers. Relative to the hours claimed and his hourly fee, the benefits realized by Weil's participation outweigh the costs claimed for that participation.²

3. NOI to Claim Compensation

As earlier noted, on July 23, 1998, TURN and UCAN timely filed their NOI after the first PHC. Both were found to be eligible for compensation in this proceeding, as well as Weil, by a ruling dated August 17, 1998. The same ruling found that these intervenors had demonstrated significant financial hardship. The prerequisites for Weil's filing of this request have therefore been met.

4. Contributions to Resolution of Issues

Weil claims to have made the following substantial contributions to the decision. The amount of the originally requested award was \$106,232.79. Each of the applicants filed a response opposing the request in whole or in part. Weil filed a reply to these responses.³

a) **Workshops.** As earlier noted, Weil attended and actively participated in the cost of capital workshops that preceded the institution of this formal proceeding. He requests compensation for 25.7 hours of professional time at

² Notwithstanding our finding in this decision, we will require intervenors to include an analysis of the benefits of participation to ratepayers in future requests for compensation.

³ Weil's reply amends the original request by adding to the originally requested \$106,232.79 the sum of \$528.40 for the 4.8 hours to prepare it, plus associated copying and postage costs.

\$200 per hour, 5.9 hours of travel and compensation time at \$100 per hour, and associated travel and other costs, for his participation in these workshops. Compensation requests for participation in workshops are consistent with our policies governing intervenor compensation. See D.98-04-059, mimeo. at 39, and § 1804(f). PG&E opposes this request on the ground that his participation did not contribute to the resolution of any issue, i.e., that it did not produce any substantive result.

We find that Weil did make substantial contributions to D.99-06-057 in relation to the issues, as we discuss in more detail below. We adopted some of his proposals, relied on his arguments in resolving other issues, and generally benefited from his policy discussion on most matters.⁴

b) **Specific Substantive Issues.**

(1) *Estimation methods.* Weil asserts that these intervenors were the only active parties that did not rely upon financial models, such as discounted cash flow, capital asset pricing, and risk premium models, to derive recommended costs of capital. They relied instead upon past authorized returns, adjusted for interest rate changes and differential risks among utilities. PG&E objects that Weil simply took a “me too” approach, urging the Commission to be skeptical about relying upon models, which was already our practice. Although the Commission considered the financial models espoused by other parties, the rates adopted in D.99-06-057 were lower than those produced by modeling. We find that this was due in part to Weil’s advocacy, which substantially contributed

⁴ The fact that TURN and UCAN had not yet engaged Weil’s services at the workshop stage is of no consequence, given the joint nature of the compensation request. In reality the three intervenors later “bundled” their own advocacy efforts to address the unbundled cost of capital issue.

to the ultimate result, but in light of the duplication of the efforts of other parties, we will reduce the award by one-third.

(2) *Interest rates.* In this proceeding the Commission considered the coefficient, or factor, by which returns on equity should be changed in response to changes in interest rates. The utilities proposed a small adjustment factor, around 0.5. The Commission's Office of Ratepayer Advocates (ORA) proposed a coefficient twice as large, and Weil proposed a value of 0.7. The adopted value is 0.6. In adopting a value of 0.6 we relied in part upon Weil's extensive presentation of past years' adjustments (Exh. 19, p. 11). We find that he made a substantial contribution on this issue, and in light of our reliance will reduce the award by only 10% despite some duplication of effort with ORA.

(3) *Risk analysis.* Weil characterizes his work product as a comprehensive presentation on the issue of risk analysis, and asserts that D.99-06-057 reflects the Commission's reliance on this information in reaching its decision. PG&E argues that we endorsed the position of another party entirely in deciding this issue against the utilities, and claims that Weil recycled portions of the presentations of Edison and ORA.

Neither ORA nor any other intervenor emphasized the issue of competitive risks in current costs of capital. Weil made a compelling showing that the position on distribution competition taken by the utilities (PG&E in particular) was exaggerated. The Commission accepted his argument that the distribution function is less risky than competitive generation functions, and specifically recognized TURN's contribution to its decision (D.99-06-057, mimeo. at 35). Finally, the Commission recognized TURN's contribution to revealing the utilities' exaggeration of the increasing risks for California jurisdictional operations. (Id., p. 3.)

In light of the express recognition given to TURN in relation to the resolution of this issue, we find a substantial contribution in relation to this issue.

(4) *Distribution unbundling.* Revision of costs of capital in response to the unbundling of electric utility distribution service was a highly controversial issue. ORA and Weil urged that a reduced return on equity was appropriate in response to unbundling, whereas the utilities took the opposite tack, urging the adoption of unbundling risk premiums.

As explained above, we agreed with the intervenors that distribution competition is limited in comparison to generation competition. We also found that irrigation districts have little incentive to build duplicative systems; that competition due to distributed generation is only in the formative stage; that the variability of distribution costs is smaller than for generation; and that revenues lost due to system bypass are small when compared to total utility revenue. (Id. at 36.) Weil's participation, along with ORA's, led to the adoption of neither an increase nor a decrease in basis points due to distribution unbundling, and helped to neutralize the position of the utilities on this issue. We find that this result constitutes a substantial contribution, but we will reduce the award by one-third in light of duplication of ORA's work.

(5) *Edison PBR.* The final decision authorizes Edison to continue the costs of capital calculated under its recently authorized performance-based ratemaking (PBR) methodology, a result that reversed the ALJ's proposal as urged by Weil. Nevertheless, Commission precedent recognizes that an intervenor's contribution to the ALJ's proposed decision may reinforce a substantial contribution to the decision as a whole. (D.92-08-030, mimeo. at 4.) Weil addressed this issue throughout the proceeding, contributing to an appreciable degree to the Commission's understanding of the issue. As an aspect of the intervenors' total involvement in the proceeding, this represents a

contribution to the result. We will not penalize Weil for not prevailing on this issue in the final decision by denying compensation, but we will reduce the award of compensation by half of the requested sum to reflect its relative significance.

(6) *Return on Equity.* The Commission adopted a 10.6% return on equity for SDG&E and PG&E, and allowed Edison to continue its return on equity under its PBR mechanism. In so doing, we selected a result in the middle of the range between roughly 9% urged by the intervenors and about 12% advocated by the utilities. Weil's principled opposition assisted the Commission, in its deliberations. We consequently find that Weil's advocacy contributed to the ultimate result, justifying compensation. On the other hand, Weil did not completely prevail on this issue, and we will reduce the award by 20 % of the requested amount.

(7) *Other issues.* We recognize certain other contributions claimed by Weil to be of significance to the decision. Specifically, he asserts that in response to his efforts the Commission rejected PG&E's proposal to base authorized returns on the after-tax weighted average cost of capital (ATWACC) and PG&E witness Kolbe's theory that a risk premium of up to 300 basis points was justified. Weil also asserts the Commission endorsed his argument that PG&E had waived any claim of retroactive ratemaking in its general rate case. PG&E responds that Weil equivocated about the first issue and thus cannot claim credit, and is double-counting the contribution concerning Kolbe's theory, which is really an aspect of the risk and unbundling portion of the case. Although acknowledging Weil's significant contribution on the retroactive ratemaking issue, PG&E believes this should be broken out as a discrete issue to be compensated separately.

We agree with PG&E that Weil's claim regarding the unbundling risk adjustment overlaps that for opposing the Kolbe theory, and partially duplicates the efforts of others. The claim for "other issues" will be discounted to adjust for the overlap and for Weil's partial contribution. We will reduce the total by one-third to adjust the hours claimed for contributions concerning the Kolbe theory.

c) *Summary.* The efforts of these intervenors were important to the Commission's deliberation and adoption of a much lower adjustment to rate of return for deregulation of generation than the utilities had requested, and to some degree influenced the Commission's judgment as to what is a reasonable rate of return. Their contribution was significant as to the underlying issues.

5. The Reasonableness of Requested Compensation

Weil requests compensation in the amount of \$106,761.19 as follows:

Robert Finkelstein, TURN staff attorney:

\$625.00	2.5 hours @ \$250
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TURN Expenses:

\$ 1,697.20	Copies
188.24	Postage
73.75	Express Mail
3.84	Telephone
6.00	FAX charges
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\$ 1,969.03	Subtotal

Weil

Workshops prior to engagement by TURN and UCAN:

\$ 5,140.00	25.7 hours professional time @ \$200
590.00	5.9 hours travel and compensation time @ \$100
11.18	Copies
21.04	Postage
72.97	Travel expenses (Vehicle mileage, bridge tolls, parking, transportation)
27.00	FAX charges
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\$5,862.19	Subtotal

After engagement by TURN and UCAN:

\$ 92,120.00	460.6 hours professional time @ \$200
4,030.00	40.3 hours travel and compensation time @ \$100
326.90	Copies
122.19	Postage
535.78	Travel (Vehicle mileage, bridge tolls, taxi fare, parking)
<u>641.70</u>	<u>FAX and telephone charges</u>
\$ 97,776.57	Subtotal

Preparation, filing and service of reply

\$480.00	4.8 hours of time @ \$100
39.60	Copying costs
<u>8.80</u>	<u>Postage</u>
\$528.40	Subtotal

Total Request: \$106,761.19

The intervenors state that the request includes all of TURN and Weil's time and costs for this proceeding, with the exception of \$681 (22.7 hours @ \$30) of administrative time billed to TURN for which no compensation is sought.

5.1 Hours Claimed

TURN and Weil have maintained detailed records of time spent on this proceeding. The request for the award includes a spreadsheet summary of TURN attorney hours, and supporting invoices and a spreadsheet for Weil's time and expenses. This documentation is clear and self-explanatory. In accordance with Commission practice, the intervenors have allocated costs by major issue. No claim is made for administrative time, which is consistent with current Commission policy. Further verification of the hours claimed is available by auditing the source documents for these compilations.

The hours claimed appear to be reasonable in relation to the work that was performed, as is the allocation of time devoted to different issues. We perceive no need to perform a detailed review of the underlying records at this time.

In light of the record as a whole and the foregoing discussion, we will apply the following percentages to the hours claimed by Weil as a means of equitably discounting his claim for contributions to our decision on these issues.

Issue	Hours claimed	Percentage applied	Hours allowed
Estimation methods	18.6	66.67	12.4
Interest rates	13.4	90.00	12.1
Risk analysis	123.1	100.00	123.1
Distribution unbundling	66.5	66.67	44.3
Edison PBR	18.6	50.00	9.3
Return on equity	53.1	80.00	42.5
Other ATWACC Kolbe theory Retroactive ratemaking	58.4	66.67 ⁵	38.9

We will allow full credit for the hours claimed for the contribution of TURN's attorney, Finkelstein; for Weil's participation in the workshops prior to his engagement by TURN and UCAN; for the time Weil devoted to motions,

⁵ We allow 100.00 percent of the hours claimed for all three of these issues, but reduce the total by 33.33 percent, principally to avoid double counting of the hours devoted to opposing Kolbe's testimony for which compensation is already granted as part of Weil's contribution on the risk analysis and unbundling issues.

procedural issues, rehearing, and preparation of pleadings relating to compensation matters; for all of Weil's travel and compensation time (none of which was avoidable in making his overall contribution); and for all other common costs.

5.2 Hourly Rates

Weil requests approval of: (1) an hourly rate of \$250 for the work performed by Finkelstein; (2) an hourly rate of \$200 for work performed by Weil himself during 1998 and 1999; and (3) one half of his rate for travel time associated with professional work and for preparation of this compensation request.

Finkelstein. The Commission recently awarded TURN compensation at an hourly rate of \$250 for Finkelstein's work. (D.99-02-006, mimeo. at 7.) We find TURN's requested hourly rate to be reasonable and consistent with our past treatment of attorney fees for comparable work.

Weil. Weil has substantial expertise in the energy field, and a thorough familiarity with the economic issues in proceedings such as this one. He has expert credentials, including a Ph.D. and professional license as an engineer, and considerable experience as both a witness and a presiding officer in Commission proceedings. He also has experience in deciding cost of capital issues in major proceedings before this Commission. We find that he qualifies for compensation at the level of an expert in the subject matter of this proceeding.

The Commission has previously awarded Weil compensation at a professional rate of \$200 per hour, and a travel and compensation award request rate of \$100 per hour, for comparable work in other proceedings. (See, e.g., D.99-06-002.) An award at that hourly rate is consistent with our past practice.

His travel was principally from his office, which was local at the time, to the Commission's San Francisco headquarters. His request for an hourly rate of \$100, one half of his professional rate, for travel and for the time devoted to preparation of this compensation request, is consistent with Commission practice.

6. Award

Based upon the foregoing, we have disallowed 69.3 hours of the total professional hours claimed for Weil's participation. At his hourly rate of \$200, this results in an award of \$13,860 less than that which was requested, or a final total amount of \$92,901.19.

We jointly award intervenors TURN, UCAN, and Weil the sum of \$92,901.19 for their respective substantial contributions to D.99-06-057 in this proceeding.

6.1 Responsibility for Payment

Weil states that the three utilities should pay the award, as required by Pub. Util. Code § 1807. We agree. However, SDG&E argues that the award should be allocated according to the relative size of the utility, based upon recorded revenues. With this we also agree. Pursuant to D.98-04-059, we will order PG&E, Edison, and SDG&E each to pay an allocated share of the total award based upon its respective California jurisdictional revenue.

Consistent with previous Commission decisions, we will order interest to be paid on the award (calculated at the three-month commercial paper rate), commencing October 24, 1999 (the 75th day after the intervenors filed their compensation request), and continuing until the utilities make their full payment of the award.

As in all intervenor compensation decisions, we put the intervenors on notice that the Commission's staff may audit their records relating to this award. Thus, the intervenors must retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify specific issues for which compensation has been sought, 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. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Timely comments were filed by PG&E and SDG&E. Reply comments were filed by Weil.

PG&E contends that the award to Weil should be reduced to reflect duplication with ORA on the risk analysis issue. Weil contests this argument, which he believes is based upon confusion of the risk analysis and distribution unbundling issues, and which improperly reiterates an argument already made by PG&E in its response to the compensation request.

We have confirmed that although Weil and ORA came to the same conclusion on the risk analysis issue, their respective work product was different. Weil deserves to be compensated as set forth in the draft decision.

Both PG&E and SDG&E propose that the order specify the use of the 1998 California jurisdictional revenues to allocate responsibility for payment of the award. There is no opposition to this request, and we have modified the decision and order accordingly.

Findings of Fact

1. Intervenors TURN, UCAN, and James Weil have jointly made a timely request for compensation for their respective contributions to D.99-06-057 in this proceeding. These intervenors have made a showing of significant financial hardship by demonstrating the economic interests of their individual members would be extremely small compared to the costs of participating in this proceeding.

2. These intervenors contributed substantially to D.99-06-057 as to all issues.

3. The participation of these intervenors was productive in that the costs claimed for their participation were greater than the benefits realized.

4. These intervenors have requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

5. Weil either did not prevail fully on certain issues, duplicated other parties' efforts, or claimed compensation for overlapping time spent in relation to certain issues. On these issues, we find that the percentages of Weil's contributions, translated into hours, are as follows, compared to Weil's request:

Estimation methods	66.67 percent
Interest rates	90.00 "
Distribution unbundling	66.67 "
Edison PBR	50.00 "
Return on Equity	80.00 "
Other issues	66.67 "

6. The miscellaneous costs incurred by these intervenors are reasonable.

Conclusions of Law

1. These intervenors have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. These intervenors should be awarded \$92,901.19 for their significant contribution to D.99-06-057.

3. Responsibility for payment should be allocated among the three applicants in proportion to the respective 1998 California jurisdictional revenue of each utility bears to the total 1998 California jurisdictional revenues of all three.

4. This order should be effective today, so that these intervenors may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN), Utility Consumers Action Network (UCAN), and James Weil (Weil), intervenors in this proceeding, are jointly awarded \$92,901.19 in compensation for their substantial contribution to Decision 99-06-057.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each pay the respective percentage of this award that represents the proportion its 1998 California jurisdictional revenue bears to the sum of the 1998 California jurisdictional revenues of all three, by utilizing jurisdictional revenues reflected in the utility's most recent 1998 FERC Form 1 (Electric) and 1998 FERC Form 2 (Gas). These payments shall be made within 30 days of the effective date of this order. Each of these utilities shall also pay interest on its allocated proportion of the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning October 24, 1999, and continuing until full payment is made.

A.98-05-019 et al. ALJ/VDR/eap *

3. This proceeding is closed.

This order is effective today.

Dated February 17, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

CARL W. WOOD

LORETTA M. LYNCH

Commissioners