

Decision 00-03-038 March 16, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company for Authority to Increase Rates Charged for Gas Service Based on Test Year 1994 and to include an Attrition Allowance for 1995 and 1996.

Application 92-11-017
(Filed January 16, 1992)

And Related Matter.

Investigation 93-02-026
(Filed February 17, 1993)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$15,361.18 in compensation for its contribution to Decision (D.) 95-05-005, which required Southern California Gas Company (SoCal Gas) to remove from its rates the costs associated with the conservation-related litigation known as the "Angelus" case.¹

1. Background

In D.94-06-020, in response to an application for rehearing filed by TURN, the Commission granted rehearing of the Angelus issue, adopting the contention of TURN that the Angelus costs may not be included in rates unless found reasonable by the Commission. That decision stated that SoCal Gas had not made a showing of reasonableness in either this or previous proceedings, even

¹ The Angelus lawsuit was brought by eight contractors who installed residential conservation measures pursuant to SoCal Gas' weatherization program.

though directed to do so by the Commission. (D.94-06-020, mimeo., p. 7.) The decision also ordered SoCal Gas to track Angelus costs recovered in rates through a memorandum account which would be subject to refund. (D.94-06-020, mimeo., p. 11.)

A Prehearing Conference (PHC) on the Angelus issue, held on September 6, 1994, was attended by TURN, Office of Ratepayer Advocates, and SoCal Gas. Both prior to and following the PHC, TURN participated in settlement negotiations with SoCal Gas and prepared for litigation of this issue by initiating research and discovery activities. SoCal Gas' motion to withdraw the Angelus costs from rates, filed November 1, 1994, was a direct result of TURN's participation on this issue.

SoCal Gas' motion did not resolve all issues since it proposed to withdraw the costs only as of the date of the rehearing order, June 8, 1994. TURN responded that both the decision granting rehearing and the Commission's prior decisions required that any Angelus costs collected from ratepayers be refunded. In a further round of pleadings, SoCal Gas and TURN each elaborated on the original arguments. In D.95-05-005, the Commission adopted TURN's position, ordering a refund of Angelus costs effective January 1, 1994, the effective date of the original decision, D.93-12-043.

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 Code Sections 1801-1812.² Section 1804(a) requires an intervenor to file a notice

² Unless otherwise stated all references are to the Public Utilities Code.

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 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 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 PHC and was found to be eligible for compensation in this proceeding by rulings dated February 9, 1993 and June 22, 1993. The same rulings found that TURN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

Section 1802(h) states a party may make a substantial contribution to a decision in several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or procedural recommendation that the Administrative Law Judge or Commission adopted. 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. The Commission has provided compensation even when the position advanced by the intervenor is rejected.³

According to TURN, it made a substantial contribution to D.95-05-005 in that the Commission fully adopted TURN's position, ordering a refund of Angelus costs effective January 1, 1994, the effective date of the original decision, D.93-12-043. We agree that adoption of TURN's position constitutes a substantial contribution as defined by Section 1804(h).

³ D.89-03-96 awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved.

5. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$16,224.93, as follows:

Attorney/Expert Witness Fees

Peter Allen

9.75 hours x \$170 = \$ 1,657.50

5.50 hours x \$185 = \$ 1,017.50

Michel Peter Florio

1.50 hours x \$235 = \$ 352.50

11.00 hours x \$250 = \$ 2,750.00

Theresa Mueller

64.25 hours x \$160 = \$ 10,280.00

Subtotal \$ 16,057.50

Other Reasonable Costs

Photocopying expense = \$ 112.20

Postage costs = \$ 18.17

Long Distance Telephone charges = \$ 9.06

Fax charges = \$ 16.00

Attorney Expenses = \$ 12.00

Subtotal \$ 167.43

TOTAL: \$ 16,224.93

5.1 Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for its attorneys with a brief description of each activity. The hourly breakdown presented by TURN reasonably supports its claim for total hours. There was no issue of duplication of effort as TURN was the moving party on the issue.

TURN claims 9.25 hours of attorneys' time amounting to \$1,727.50 for preparation of its compensation request. In keeping with prior Commission practice, we will compensate the attorneys' time for drafting TURN's compensation request at 50% of the standard rate, reflecting the largely administrative nature of the task. Accordingly, we will reduce TURN's request by \$863.75.

No hours have been claimed for travel time.

5.2 Hourly Rates

The hourly rates requested for TURN's attorneys have been approved in previous Commission decisions. Therefore, there is no issue regarding hourly rates.

5.3 Other Costs

TURN requests \$167.43 for photocopying and other expenses. Considering the scope of this proceeding, we agree that the amount is reasonable.

5.4 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. (D.89-04-059, mimeo., pp. 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.

In this matter, SoCal Gas was required to refund the costs in the memorandum account associated with the conservation related litigation for the Angelus case. The amount of the refund clearly exceeds the costs TURN claims for participation. We find TURN's participation was productive.

6. Award

We award TURN compensation in the amount of \$15,361.18 calculated as setforth below.⁴

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 September 23, 1995 (the 75th day after TURN filed its compensation request)⁵ and continuing until the utility makes full payment of the award.

As in all intervenor compensation decisions, we put TURN on notice that Commission's staff may audit TURN's records related to this award. Thus,

⁴ \$16,224.93 - \$863.75 = \$15,361.18.

⁵ TURN's request was filed on July 10, 1995.

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 rates, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Comments on Draft Decision

The draft decision of ALJ Patrick in this matter was mailed to the parties in accordance with Section 311 (g)(1) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.95-05-005. TURN has made a showing of significant financial hardship by demonstrating that the economic interests of its individual members would be small compared to the costs of participating in this proceeding.
2. TURN contributed substantially to D.95-05-005.
3. TURN has requested hourly rates that are no greater than the market rates for individuals with comparable training and experience.
4. The miscellaneous costs incurred by TURN are reasonable.
5. TURN's request should be reduced by \$863.75 to reflect an adjustment for preparation of its compensation request.
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 \$15,361.18 for its contribution to D.95-05-005.
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 \$15,361.18 in compensation for its substantial contribution to Decision 95-05-005.
2. Southern California Gas Company (SoCal Gas) shall pay TURN a total award of \$15,361.18 within 30 days of the effective date of this order. SoCal Gas 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 September 23, 1995, and continuing until full payment is made.
3. This proceeding is closed.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners