

Decision 00-04-017 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Recover Capital Additions to its Fossil Generating Facilities Made Between January 1, 1996 and December 31, 1996 and Related Substantive and Procedural Relief.

Application 97-10-024
(Filed October 3, 1997)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$7,892.67 in compensation for its contribution to Decision (D.) 99-10-060.

1. Background

On October 3, 1997, Southern California Edison Company (Edison) filed an application seeking recovery of approximately \$100.3 million in 1996 capital additions to non-nuclear generating plant through transition cost recovery. After hearing, the Commission issued an interim opinion granting Edison recovery of \$82.4 million of 1996 capital additions and, partially granting TURN's petition to set aside the submission, reopening the hearing to allow Edison to demonstrate the cost-effectiveness of approximately \$12.5 million associated with certain projects that were not cost-justified on the record. (D.99-03-055, *mimeo.*, pp. 15d; 27-28.)

In the reopened proceeding, a prehearing conference was held and testimony was prepared and exchanged. TURN sought disallowance of \$3.8 million of the \$12.5 million of 1996 capital additions at issue. On October 21, 1999, we issued D.99-10-060, adopting a settlement reached between TURN and Edison resolving all remaining issues in Edison's 1996 capital

additions application. The Decision provided for the disallowance of \$1.415 million of the 1996 capital additions at issue. We approved the Edison-TURN settlement as an all-party settlement noting that ORA, an active participant in the earlier phase of this proceeding, did not file testimony and advised the administrative law judge (ALJ) that it was withdrawing from participation.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Sections 1801-1812¹ of the Public Utilities Code. 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 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,

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

“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 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 that the Commission issue a decision determining whether the customer has made a substantial contribution to the proceeding and the amount of compensation to award. Section 1806 requires the Commission to compensate eligible parties at a rate that reflects “the market rate paid to people with comparable training and experience who offer similar services.”

3. NOI to Claim Compensation and Timeliness of Request

TURN earlier established its eligibility for compensation in this proceeding. TURN timely filed its NOI on December 23, 1997, after the first prehearing conference. On January 8, 1998, ALJ Malcolm issued a ruling determining that TURN was a customer as defined in § 1802, that it would experience significant financial hardship by participating in this proceeding, and that it provided adequate estimates of the nature and extent of its planned participation. Thus, TURN was found eligible for compensation.²

² D.99-09-054 granted TURN’s request for compensation for its contribution to this proceeding through the issuance of the interim opinion.

Having established its eligibility in that earlier phase of this proceeding, TURN remains eligible to claim compensation in this phase. (Rule 76.76, Commission Rules of Practice and Procedure.)

TURN filed its Request for Compensation on December 20, 1999. Section 1804(c) allows the filing of a request within 60 days of the issuance of the decision. The decision was mailed on October 21, 1999. TURN's request was filed on the 60th day after the decision was issued and is therefore timely.

4. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.³ It may offer a factual or legal contention upon which the Commission relied in making a decision,⁴ or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁵ 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.⁶ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁷

³ Public Utilities Code § 1802(h).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 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).

TURN believes it has substantially contributed to D.99-10-060 in two ways. First, it points out that it was through TURN's efforts that the Commission reopened this proceeding to take limited submittals relating to \$12.5 million in capital additions sought to be recovered by Edison. Second, TURN states the Commission ultimately adopted a settlement supported by TURN that denied transition cost recovery for \$1.415 million of those capital additions. In this regard, TURN notes that it submitted testimony proposing a higher level of disallowance but believes that the level of disallowance included in the settlement represents a reasonable outcome given litigation risk.

TURN further observes that it was the only active party participating in the reopened proceedings and the settlement other than Edison because, while ORA had participated in the earlier phase of the proceeding, it did not participate in the reopened proceeding or the settlement.

We agree that TURN made substantial contributions to D.99-10-060 in the way that it identifies. We reopened this proceeding based upon TURN's application for rehearing⁸ and we adopted a settlement supported by TURN that denied transition cost recovery for \$1.415 million in capital additions sought to be recovered by Edison. (D.99-10-060, *mimeo.*, p. 7.) Although the settlement disallows \$1.415 million in costs rather than the \$3.8 million sought by TURN, the nature of a settled outcome almost invariably dictates that no party's position will be adopted in full. The appropriate inquiry is whether TURN's participation substantially assisted the parties in reaching a resolution. We find that it did. TURN was the only active party participating in the reopened proceeding. In the

⁸ However, we note that TURN previously was compensated in D.99-09-054 for its efforts to reopen the hearing. TURN does not seek duplicative compensation here.

absence of TURN's analysis and testimony, it is unlikely that Edison would have agreed to those disallowances included in the settlement ultimately adopted by the Commission. We therefore find that TURN contributed substantially to D.99-10-060.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$7,892.67 as follows:

Attorneys	Hours	Hourly Rate	Compensation
Finkelstein	14.25	\$265.00	\$3,776.25
	8.00	\$132.50	\$1,060.00
Subtotal Attorneys			\$4,836.25

Expert Witnesses	Hours	Hourly Rate	Compensation
JBS Energy Inc. William Marcus	2.91	\$145	\$ 421.95
JBS Energy Inc. Jim Helmich	21.75	\$100	\$2,175.00
Subtotal Experts			\$2,596.95

Miscellaneous Costs	
Photocopying @ \$.20/page	\$ 365.00
Postage	\$ 85.80
Fax @ \$1/min.	\$ 2.20
Telephone	\$ 6.47
Subtotal Expenses	\$ 459.47
Total Request	\$ 7,892.67

5.1 Overall Benefits of Participation

Section 1801.3 provides guidance for the administration of the intervenor compensation program. In D.98-04-059, we provided that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3(f), further explaining that the participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. (See D.98-04-059, *mimeo.*, pp. 31-33, and Finding of Fact 42.) 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.

At issue in the phase of this proceeding that culminated in D.99-10-060 was the reasonableness, including the cost-effectiveness, of specific capital additions for which Edison sought transition cost recovery. At stake for Edison was whether the Commission would find its capital additions reasonable and cost-effective, thus allowing it to recover the cost of those additions through the transition cost balancing account. At stake for Edison's customers was ensuring that only reasonable and cost-effective capital additions were recovered from them under the transition cost balancing account. TURN points out that its participation in this proceeding was productive, e.g., provided value to ratepayers, because Edison's requested transition cost recovery of 1996 generation-related capital additions was reduced by \$1.415 million, an amount which greatly exceeds the cost of TURN's participation in the entire proceeding, let alone the costs associated with the limited reopening.

We agree and find that TURN's participation was productive in that the benefits realized by ratepayers were substantially greater than the costs

TURN claims for its participation. Through TURN's participation, ratepayers were saved approximately \$1.407 million in competition transition cost charges.

5.2 Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for attorney Robert Finkelstein and for experts William Marcus and Jim Helmich with a brief description of each activity. It did not, however, attempt to allocate time and task by issue for this phase of the proceeding, because, in its view, the work all related to a single issue, the reasonableness of the capital additions projects specifically identified in D.99-03-055.

We agree with TURN that, under the circumstances of this case, an allocation of time and task by issue is unnecessary. A perusal of the time records demonstrates that the attorney's and experts' time was spent on the singular issue presented in this limited proceeding and that their use of time was reasonably efficient and appropriately tailored to the limited scope. Further, since TURN was the only active party to this phase of the proceeding, the work was non-duplicative. TURN's claim for total hours is reasonable.

5.3 Hourly Rates

TURN requests an hourly rate of \$265 for work performed by its attorney Finkelstein in 1999, which is \$15 per hour more than the hourly rate approved for Finkelstein's work in 1998. TURN was recently granted compensation for work performed by Robert Finkelstein in 1999 at the rate of \$265/hr. This hourly rate is consistent with that recently approved by the Commission in D.00-02-038 and D.00-02-008, decisions that were issued after TURN filed its compensation request in this proceeding.

TURN seeks an hourly rate for its expert consulting economist, William Marcus of JBS Energy, and for Jim Helmich, the firm's principle engineer, consistent with the hourly rates approved for work performed in 1998 in this proceeding. These rates were approved by the Commission in D.99-09-054. TURN points out that JBS Energy actually billed it for hourly rates slightly higher than those approved for work in 1998—\$150 per hour for Marcus and \$110 per hour for Helmich. Because of the small number of hours requested in this case, TURN has not elected to seek compensation at the higher rate at this time. However, TURN states that it reserves the right to seek the higher rates actually billed for work performed in 1999, presumably in future cases.

We find TURN's requested hourly rates to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work. Consistent with our usual practice, we grant half of Finkelstein's hourly rate for time spent drafting the compensation request, as TURN proposes. By this decision, we do not preclude TURN from making an appropriate showing in future cases for receiving compensation at higher hourly rates for other work performed by Marcus and Helmich.

5.4 Other Costs

TURN requests \$459.47 for other costs (e.g., photocopying, postage, telephone, and fax) incurred by its experts. TURN appropriately itemized the costs for preparation and distribution of pleadings and other documents, which appear related to its participation in this case. TURN states that the other costs for fax and telephone are related to its work in this proceeding. Based on this information, and given the small amount of costs at issue, TURN's request for costs appears reasonable.

6. Award

We award TURN \$7,892.67, 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 on March 4, 2000 (the 75th day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

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 § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. TURN, a customer that has shown undue financial hardship, has made a timely request for compensation for its contribution to D.99-10-060.
2. Having established its eligibility in an earlier phase of this proceeding, TURN remains eligible to claim compensation in this phase.
3. TURN made a substantial contribution to D.99-10-060.

4. TURN's participation was productive in that the benefits realized by ratepayers were substantially greater than the costs TURN claims for its participation.

5. TURN has requested hourly rates for its attorneys and experts that were previously approved by the Commission for comparable work and are reasonable.

6. 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. TURN should be awarded \$7,892.67 for its contribution to D.99-10-060.

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 \$7,892.67 in compensation for its substantial contribution to Decision 99-10-060.

2. Southern California Edison Company (Edison) shall pay TURN \$7,892.67 within 30 days of the effective date of this order. Edison 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 March 4, 2000, and continuing until full payment is made.

3. Application 97-10-024 is closed.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners