

Decision 00-05-017 May 4, 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 awards The Utility Reform Network (TURN)¹ \$16,872.17 for its substantial contribution to Decision (D.) 99-12-046, which addressed revenue cycle service (RCS) credits in the calculation of electric line and service extension allowances. No protests to TURN's request were filed.

1. Background

In D.99-12-046, as proposed by TURN, the Commission removed the RCS credits for meter services, meter reading and billing, and payment services from the calculation of the line and service extension allowances. The Commission deferred to other proceedings the meter ownership issue and removal of the meter ownership credit,² and declined to adopt TURN's proposal to require new customers to pay up front for their meters.

Following two prehearing conferences (PHCs), the parties agreed that evidentiary hearings would not be necessary. This matter was submitted for

¹ All references to TURN include Utility Consumers' Action Network.

² The Commission deferred the meter ownership issues to Application (A.) 99-06-033 et al., the pending Revenue Cycle Services Cost and Rate Proposals Proceeding, and the Direct Access Fees proceedings.

decision based on concurrent opening and reply briefs filed on May 24 and June 4, 1999, respectively.

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.³ 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,

"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

³ All statutory references are to the Public Utilities Code unless otherwise noted.

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 that determines whether the customer has made a substantial contribution and what amount of compensation to award. 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 and was found to be eligible for compensation in this proceeding by an Administrative Law Judge's (ALJ) ruling dated January 27, 1995. The same ruling found that TURN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in several ways. (Section 1802(h).) 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 ALJ 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.⁴

⁴ 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 states that in D.99-12-046, the Commission (1) removed from the calculation of line and service extension allowances the revenues associated with certain RCS credits, and (2) addressed issues associated with the appropriate treatment of meters for future line and service extensions. TURN played an instrumental role in bringing these issues before the Commission. While the outcome adopted in D.99-12-046 did not provide all of the relief that TURN believes is appropriate at this time, the decision deferred resolution of a number of issues to another proceeding.

In D.99-12-046, the Commission directed the utilities to remove from the "net revenues" used to calculate line and service extension allowances the revenues associated with billing and meter reading credits established in the RCS proceeding. TURN had called for such adjustments, both in the previous RCS docket and in the present rulemaking, along with the further adjustment of removing the meter ownership credit revenues. However, the Commission deferred any removal of the meter ownership credit revenues until the underlying metering issues had been more fully aired and resolved. (Conclusion of Law 6.)

TURN submits the Commission should find that its presentation on the interrelationship of RCS and line and service extension allowances constitutes a substantial contribution to D.99-12-046. To reflect the fact that the Commission did not adopt TURN's proposals in total, TURN has made an adjustment to the number of hours requested, as discussed below.

5. The Reasonableness of Requested Compensation

TURN requests compensation as follows:⁵

Attorney Fees

Robert Finkelstein	3.5 hours x \$250	=	\$ 875.00
	5.75 hours x \$265	=	\$ 1,523.75
	½ x 51.75 hours x \$265	=	\$ 6,856.88
	8.0 hours x \$132.50	=	\$ 1,060.00
Michel Florio	½ x .25 hours x \$275	=	\$ 34.38
	Subtotal	=	\$10,350.01

Expert Witness Fees and Expenses

JBS Energy Inc. (JBS)			
William Marcus	0.58 hours x \$150	=	\$ 87.50
Jeff Nahigian	49.5 hours x \$ 85	=	\$4,207.50
	½ x 23.25 hours x \$ 95	=	\$1,104.37
JBS Expenses		=	\$ 76.75
	Subtotal	=	\$5,476.12

Other Reasonable Costs

Photocopying expense		=	\$ 834.80
Postage costs		=	\$ 120.23
Fax charges		=	\$ 38.50
Phone expense		=	\$ 52.51
	Subtotal	=	\$ 1,046.04
	TOTAL	=	\$16,872.17

5.1 Hours Claimed

Robert Finkelstein, who bears primary responsibility for the organization's legal work on electric industry regulatory matters, handled virtually every aspect

⁵ Corrected request.

of this proceeding on behalf of TURN. A daily listing of the specific tasks performed by Finkelstein was provided. However, TURN did not allocate his time by issue. TURN contends that the allocation methodology prescribed in D.85-08-012 is not applicable to this single subject proceeding, i.e., applying RCS credits to the line extension allowance.

Therefore, TURN proposes an alternative approach to allocation that reflects the time at which the underlying activity took place. TURN would rely on two periods, the first running through the first PHC of January 26, 1999, and the second covering all times thereafter. According to TURN, under this approach, the work performed during the first period would be the equivalent of general preparation time, the stage where the Commission has long recognized that a party is still learning about the case (or, in this instance, about the range of positions that the utilities would take). The first PHC would be used as the demarcation between the periods because only after the first PHC did it become clear that the differences among the utilities were not only substantial but unlikely to be easily overcome or resolved. TURN suggests that the period after the first PHC be treated as devoted more to advocacy of TURN's proposed resolution of the disputed issues.

TURN seeks compensation for all hours devoted to tasks in the first period. In recognition of the fact that the Commission did not adopt TURN's preferred positions in D.99-12-046, but rather deferred final resolution of the meter ownership credit issue to A.99-06-033 et al., TURN seeks compensation for only one-half of the hours devoted to tasks that occurred in the second period. TURN asks the Commission to note that TURN is seeking to defer a final determination of its ability to recover compensation for the other half of these hours until the underlying issue is decided in A.99-06-033 et al. TURN states that should the Commission adopt an outcome in that proceeding that reflects

TURN's substantial contribution on the issue, then TURN may seek an opportunity to include these hours in any resulting compensation request in A.99-06-033 et al.

Likewise, TURN seeks to recover \$5,476.12 of the \$6,580.50 in costs billed to TURN by JBS, the consulting firm that provided expert witness services to TURN in this proceeding. Jeff Nahigian performed the bulk of the work in reviewing and critiquing the various utility proposals. William Marcus, one of the firm's principals, was consulted on two occasions when Nahigian was not available. Therefore, in view of Marcus' limited participation, TURN proposes that the above allocation be applied to Finkelstein and Nahigian's hours only.

TURN also seeks compensation for eight hours at half the usual hourly rate for the hours devoted to the preparation of its compensation request.

We agree that TURN has proposed a reasonable means of complying with the Commission's guidelines on allocation of time. As requested, TURN should be compensated for half the hours after the first PHC, with leave to seek compensation for the remaining hours if TURN prevails on the meter ownership credit issue in A.99-06-033 et al. Likewise, TURN may seek to recover the remaining JBS costs.

5.2 Hourly Rates

For Finkelstein, TURN requests hourly rates of \$250 and \$265 for work performed in 1998 and 1999, respectively. We find that these hourly rates are consistent with those already approved in prior decisions. (See D.00-02-038.)

TURN requests an hourly rate of \$275 for work performed by Florio. We have previously approved this rate for Florio for fiscal year 1996-97. (See D.99-08-005.)

The 1998 hourly rates requested by TURN for JBS staff reflect the actual billed costs that TURN incurred in retaining their services (Section 1802(c)). The billing rates requested for each firm member are consistent with JBS' standard billing rates during the period when the work was performed. In 1999, the billing rates by JBS were \$150 per hour for Marcus, and \$95 per hour for Nahigian, reflecting a slight increase over the rates the Commission has approved for the firm's work in 1998 and prior years. Accordingly, TURN seeks approval of the \$150 and \$95 hourly rates for Marcus and Nahigian, respectively, for work done in 1999. In its request, TURN recites the qualifications and experience of Marcus and Nahigian and provides comparatives of market rates for such expert witnesses.⁶

We agree that JBS, and Marcus and Nahigian in particular, have provided expert testimony and services in many Commission proceedings over the years. We agree also that the requested 1999 hourly rates for Marcus and Nahigian are reasonable in light of comparable market rates and awards made to other experts with comparable experience.

5.3 Other Costs

TURN's request for \$1,046.04 for photocopying, postage, fax and phone expenses is reasonable, considering the amount of work involved in TURN's participation in this proceeding.

⁶ See February 16, 2000, supplement to TURN's request.

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. (See D.98-04-058, *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. Intervenors 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.

TURN states that the removal of RCS revenues from the "net revenue" used to calculate line and service extension allowances will yield lower allowances across the board, thus reducing the amount of increased rate base associated with such allowances. Using the adopted Southern California Edison Company (Edison) tariffs to illustrate, the changes adopted in D.99-12-046 yield a reduction in the pre-calculated residential allowance of \$159. Thus, for every residential installation after the decision is implemented, the increase to rate base will be approximately \$159 less than it would have been otherwise. For non-residential customers, further reductions will be calculated on an extension-specific basis. Similar reductions to rate base for San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) can be expected. TURN submits that the Commission may reasonably conclude that the savings to ratepayers from reducing the "net revenues" and, as a result, the allowances, will offset the costs of TURN's participation many times over.

We agree that TURN's contribution to D.99-12-046 was productive.

5.5 Duplication of Effort

TURN was the initiating party with regard to reflecting RCS credits in the line extension allowances. Therefore, no adjustment for duplication is warranted.

6. Award

We award TURN \$16,872.17. 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 May 1, 2000, (the 75th day after TURN filed its compensation request)⁷ and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that 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. Manner of Payment of Award

TURN recommends that the compensation award should be divided among Edison, PG&E, and SDG&E according to each utility's share of total retail sales of electricity in 1998, measured in kilowatt-hours. We agree.

⁷ TURN filed a supplement to its request for compensation on February 16, 2000, and we count the 75 days from that date.

8. 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 waived.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.99-12-046. TURN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.

2. TURN's efforts resulted in substantial contribution to D.99-12-046.

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 that have already been approved by the Commission.

5. TURN has requested that the Commission approve hourly rates for JBS experts William Marcus and Jeff Nahigian of \$150 and \$95 for work done in 1999. Their rates for 1998 have already been approved by the Commission.

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. Hourly rates of \$150 and \$95 for William Marcus and Jeff Nahigian, respectively, for work done in 1999, are reasonable and should be approved.

3. TURN should be awarded \$16,872.17 for its contribution to D.99-12-046.

4. 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 \$16,872.17 in compensation for its substantial contribution to Decision (D.) 99-12-046.
2. For William Marcus and Jeff Nahigian, hourly rates of \$150 and \$95, respectively, for work done in 1999, are approved.
3. Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company shall each pay TURN the respective utility's share of award. The shares shall be computed on the basis of each utility's total retail sales of electricity in 1998, measured in kilowatt-hours. A utility that has not made full payment by May 1, 2000, shall also pay interest on the award from May 1, 2000, at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, until the utility has made full payment.
4. This proceeding remains open to address other matters.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

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