

Decision 99-02-006 February 4, 1999

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

Application of Pacific Gas and Electric Company  
To Identify Cost Savings for Revenue Cycle  
Services Provided by Other Entities and to  
Propose Credits for End-Use Customers in Such  
Circumstances for Implementation No Later Than  
January 1, 1999.

Application 97-11-004  
(Filed November 3, 1997)

And Related Matters.

Application 97-11-011  
(Filed November 3, 1997)  
Application 97-12-012  
(Filed December 4, 1997)

**O P I N I O N**

This decision grants Toward Utility Rate Normalization and Utility Consumers Action Network (jointly, TURN/UCAN) an award of \$92,850.91 in compensation for contributions to Decision (D.) 98-07-032 and D.98-09-070 which directed electric utilities to offer customers meter and billing, or 'revenue cycle services,' separately from other distribution services and adopted prices for each of those services.

**1. Background**

We initiated this rulemaking for the purpose of determining which revenue cycle services should be "unbundled" from distribution services, that is, offered separately and priced separately from other distribution services. The purpose of the proceeding was to promote competition in revenue cycle services markets. Phase I of the proceeding addressed issues which implicated changes to the utilities' billing systems. We resolved Phase 1 issues in D.98-07-032. Phase 2

resolved the merits of specific proposals in D.98-09-070. The Commission issued these decisions following workshops and hearings.

TURN/UCAN filed this request for compensation on November 2, 1998. Southern California Edison Company (SCE) filed a protest to TURN/UCAN's request on December 2, 1998.

## **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 (PU) Code § 1801-1812. 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 compensation and 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 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.

**3. NOI to Claim Compensation**

TURN/UCAN filed an NOI to claim compensation in this proceeding on January 12, 1998. The assigned Administrative Law Judge (ALJ) found TURN/UCAN eligible for compensation in this proceeding in rulings dated February 11, February 13, and February 17, 1998. We affirm the ALJ's rulings here.

**4. Contributions to Resolution of Issues**

A party may make a substantial contribution to a decision in three ways.<sup>1</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision.<sup>2</sup> Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>3</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>4</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

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<sup>1</sup> Cal. PUC § 1802(h).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</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).

TURN/UCAN states it made a substantial contribution to D.98-07-032 and D.98-09-070, pointing to several areas in the decision to support its view.

SCE argues that TURN/UCAN failed to make substantial contributions in a number of areas for which TURN/UCAN seek compensation. SCE argues that TURN/UCAN added little to the resolution of policy considerations, billing offsets, or new meter installations. SCE recommends a reduction in compensation for work on geographic deaveraging but presents no argument or evidence in support of its position. TURN responded to SCE's suggestions, arguing that SCE does not make a case for a reduced award.

TURN/UCAN made a substantial contribution to many aspects of D.98-07-032 and D.98-09-070. In Phase 1, TURN/UCAN argued that the Commission should not issue an order which would limit the scope of inquiry in Phase 2 on the treatment of new meters, a recommendation which the Phase 1 order honored. In Phase 2, the Commission articulated decision-making principles similar to those TURN/UCAN stressed in its opening brief. Consistent with TURN/UCAN's recommendation, the Commission required the utilities to present evidence on long run marginal costs at a later date. TURN/UCAN supported the cost methodology the Commission adopted in Phase 2 with some modifications. Although the Commission did not adopt all of TURN/UCAN's proposed modifications, it did find that some cost savings will occur because of a reduction in uncollectibles rates and that PG&E and SCE had undervalued existing meters, consistent with TURN/UCAN's views. The Commission reflected TURN/UCAN's position regarding the effect of unbundling on the calculation of line and service extension allowances. The Commission concurred with TURN/UCAN's views that billing offsets should be collected from ESPs rather than from reductions to credits, and we modified the proposed decision to recognize that the utilities' proposed offsets would not be

automatically reasonable. We also rejected geographic deaveraging, as TURN/UCAN recommended.

Some of TURN/UCAN's positions were shared by other parties. We nevertheless recognize that TURN/UCAN's analysis and presentation were distinguishable in their underlying reasoning. Accordingly, we do not reduce the award for duplication of effort and reject SCE's suggestions to that effect.

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

TURN/UCAN request compensation in the amount of \$94,132.16 as follows:

Robert Finkelstein, Attorney 191.5 hours x \$250	\$47,875.00
Theresa Mueller, Attorney 4.5 hours x \$105	\$ 877.50
Michael Shames, Attorney 59.3 hours x \$190	\$11,267.00
William Marcus, JBS Energy 45.5 hours x \$145	\$ 6,597.50
Jeff Nahigian, JBS Energy 276.25 hours x \$ 85	\$23,481.25
Steve Helmich, JBS Energy 1.0 hour x \$ 50	\$ 50.00
JBS Expenses	\$ 638.10
TURN/UCAN Expenses	<u>\$ 3,335.81</u>
Total	\$94,132.16

### **5.1. Hours Claimed**

In their joint filing, TURN/UCAN explain that Robert Finkelstein was the lead attorney in this case. TURN/UCAN's filing contains a daily listing of the specific tasks performed by Mr. Shames, Mr. Finkelstein and Ms. Mueller in this proceeding. The TURN/UCAN pleading identifies activities according to whether they were undertaken to address issues in Phase 1 or Phase 2. For Phase 2, TURN/UCAN break down time according to whether the task was related to policy, avoided cost credits, new meter installations, or geographic deaveraging. TURN/UCAN also present information about time spent on activities that cannot be allocated between issues, such as time spent at prehearing conferences or reviewing the proposed decision. We find that TURN/UCAN's presentation of the time spent on various activities is reasonable and the total hours TURN/UCAN claims are reasonable.

### **5.2. Hourly Rates**

Section 1806 requires the Commission to compensate eligible parties at a rate which reflects the "market rate paid to persons of comparable training and experience who offer similar services."<sup>6</sup> TURN/UCAN seek funding for the work of three attorneys and two consultants (plus a very small sum for the work of a third consultant).

#### **Robert Finkelstein**

TURN/UCAN seek compensation for Mr. Finkelstein at an hourly rate of \$250 for work undertaken in 1998. The Commission has not approved this rate for Mr. Finkelstein. It is a 6.4% increase from previous awards of \$235 an hour for work undertaken in 1997. TURN/UCAN believe the increase is justified

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<sup>6</sup> Cal. PUC § 1806.

on the basis that Mr. Finkelstein has worked on consumer law and in litigation continuously since 1985 when he graduated from law school. Mr. Finkelstein has worked for TURN since 1992, having worked on a number of major energy proceedings. TURN/UCAN provide an excerpt from Of Counsel, a billing rate survey of attorneys in the San Francisco area, to justify the increase to Mr. Finkelstein's hourly rate. We find that the requested rate is within the range of market rates in the area for attorneys with comparable experience.

We reduce Mr. Finkelstein's hourly rate to \$125 for work undertaken in pursuit of this compensation request. This adjustment of \$1,281.25 recognizes our policy to compensate such work at half of an attorneys' hourly rate under normal circumstances.

**Michael Shames**

TURN/UCAN request an hourly rate of \$190 for work performed by Mr. Shames in this proceeding. The Commission approved the rate in D.98-04-027 as representative of a market rate. We approve it for work in this proceeding.

**Theresa Mueller**

TURN/UCAN request an hourly rate of \$195 for work performed by Ms. Mueller in this proceeding. The Commission approved this amount for Ms. Mueller in D.98-08-016 and we approve it for work in this proceeding.

**JBS Energy Staff**

TURN/UCAN seek to recover \$30,766.85 in costs billed to TURN by JBS Energy for the assistance of expert witnesses. Their pleading observes that the amounts requested for each consultant is consistent with rates the Commission has approved in other decisions with one exception. TURN/UCAN seek \$50 an hour for Mr. Helmich's work although the Commission has previously approved a rate of \$45 an hour for him. We find that this increase for

a single hour of work is reasonable. We approve of the amounts requested for JBS Energy staff.

### **5.3. Justification for JBS Energy Billings**

SCE objects to TURN/UCAN's request for JBS Energy, arguing that TURN/UCAN fails to provide any detail as to the work JBS Energy had done. TURN/UCAN respond that the failure to provide such information was an oversight, arguing that JBS Energy's work in the proceeding was apparent to anyone attending hearings or workshops. In response to SCE's pleading, TURN/UCAN filed more detailed information about the work of JBS Energy's witnesses to show that Mr. Nahigian worked 276.25 hours and Mr. Marcus worked 45.5 hours. The work of both witnesses is broken down by issue area where possible. Other hours were dedicated to preparing for and attending workshops and assisting counsel, among other things.

D.98-10-030 admonished TURN for failing to provide a detailed breakdown of the hours JBS Energy spent in the associated proceeding. We expect intervenors, especially those with such extensive familiarity with our rules as TURN and UCAN, to provide support for their compensation requests. TURN/UCAN has ultimately done so here and we grant their request for compensation for the work of JBS Energy.

### **5.4. Other Costs**

TURN/UCAN claim \$3,345.81 for such items as postage, photocopying and telephone calls. This amount is reasonable in light of the work accomplished in the two phases of this proceeding and considering the number of pleadings TURN/UCAN submitted.



**6. Award**

We award TURN/UCAN \$92,850.91 for contributions D.98-07-032 and D.98-09-070. 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 January 16, 1999, the 75<sup>th</sup> day after TURN/UCAN filed this compensation request and continuing until the utility makes its full payment of award.

**7. Allocation of Award Among Utilities**

TURN/UCAN propose that the same allocation formula be applied as that adopted by the Commission in other compensation orders issued in electric industry restructuring (R.94-04-031), that is, according to each utility's share of total retail sales of electricity in California in 1997, measured in kilowatt hours. (See Ordering Paragraph 2, D.96-08-040). We adopt this allocation here.

**8. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with PU Code § 311(g)(1).

**Findings of Fact**

1. TURN/UCAN timely request compensation for contributions to D.98-07-032 and D.98-09-070 as set forth herein.
2. TURN/UCAN made substantial contributions to D.98-07-032 and D.98-09-070 on issues relating to public policy, billing offsets, geographic deaveraging, and cost study methodologies, among other things.

3. TURN/UCAN's positions were similar to those advocated by other parties but were sufficiently distinguishable in their reasoning to justify full funding for the associated work.

4. TURN/UCAN request hourly rates for attorneys and consultants that have already been approved by the Commission with the exception of that requested for Robert Finkelstein. TURN/UCAN have justified the increase for Mr. Finkelstein's work in 1998.

5. The miscellaneous costs incurred by TURN/UCAN in this proceeding are reasonable.

6. TURN/UCAN request that compensation be awarded to TURN, which will remit UCAN's share to UCAN.

### **Conclusions of Law**

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

2. TURN/UCAN should be awarded \$92,850.91 for contributions to D.98-07-032 and D.98-09-070 in this proceeding.

3. This order should be effective today so that TURN/UCAN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED that:**

1. The Utility Reform Network and Utility Consumers Action Network (TURN/UCAN) are awarded \$92,850.91 as set forth herein for substantial contributions to Decision ( D.) 98-07-032 and D.98-09-070.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company, and San Diego Gas and Electric Company shall, within 30 days of this order, pay TURN that pro rata portion of TURN's award equal to each utility's percentage of the sum of the retail kilowatt hours of electricity sold by the utilities in 1997, plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on January 16, 1999, and continuing until the full payment has been made.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners