

Decision 99-05-019 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company for Approval of a Long Term Gas Transmission Service Contract with Distribuidora de Gas Natural de Mexicali, S. de R.L. de C.V.

Application 97-03-015
(Filed March 10, 1997)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$12,375.66 in compensation for contributions to Decision (D.) 98-12-024. That decision addressed the application of Southern California Gas Company (SoCal) for approval of a long-term contract offering distribution service in Mexicali, Mexico.

1. Background

SoCal's application in this proceeding requested approval of a long-term contract with DGN, a partially-owned affiliate of SoCal providing distribution service in Mexico. The contract would offer international service and was formed by two affiliates of the same parent company. The Commission held hearings on the matter in March 1998.

TURN filed this request for compensation on February 8, 1999 following issuance of D.98-12-024, which resolved outstanding issues in this proceeding.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. 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 that 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 filed an NOI to claim compensation in this proceeding as required by § 1804(a). The assigned administrative law judge issued a ruling on December 12, 1997 finding TURN eligible for compensation in this proceeding.

4. Contributions to Resolution of Issues

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

In this proceeding, TURN presented testimony addressing the requested exemption of the contract from exclusions costs, the requested waiver from rules governing affiliate transactions, the proposal to share contract revenues with San Diego Gas & Electric Company (SDG&E) and the requested waiver of provisions of General Order (GO) 96-A. The Commission adopted TURN's position with regard to exclusions costs. It did not adopt TURN's recommendation regarding waiver of GO 96-A. The company, however, ultimately withdrew its requests for exemption from the affiliate transaction rules and for approval of revenue sharing with SDG&E.

¹ Cal. PUC § 1802(h).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 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 has demonstrated that it made a substantial contribution to D.98-12-024. The Commission adopted TURN's position with regarding to a major issue and likely influenced the decision of SoCal to reconsider other elements of its request. Although the Office of Ratepayer Advocates (ORA) supported TURN's position in part, we find that TURN's request should not be reduced for duplication of effort, especially since TURN makes the reasonable observation that its request is much less than originally anticipated due to the alignment of interests by other parties.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$12,375.66 as follows:

Michael Florio, Attorney:

@ \$275 (1996-1997)	\$ 481.25
@ \$290 (1997-1999)	2,733.25

Theresa Mueller, Attorney:

@ \$195 (1996-1997)	1,121.25
@ \$205 (1997-1999)	6,216.63

Marcel Hawiger

@ \$160	1,160.00
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Photocopying, postage	663.28
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Total	\$12,375.66
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5.1 Hours Claimed

TURN seeks compensation for all work related to SoCal's application except it does not seek compensation for work on its recommendation with regard to GO 96-A because the Commission rejected its recommendation. TURN's request is considerably smaller than its originally

estimated budget of \$63,625. With this adjustment, the hours TURN claims are reasonable.

5.2 Hourly Rates

Section 1806 requires the Commission to compensation eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."⁶ TURN seeks funding for the work of three attorneys.

Michael Florio. TURN seeks compensation for Mr. Florio at hourly rates for each year which have been approved by the Commission in past decisions. It discounts by 50% the rate for work undertaken on this compensation request, consistent with our policy. Mr. Florio's hourly rates are reasonable for purposes of this request.

Theresa Mueller. TURN seeks hourly rates for Ms. Mueller that have been approved in previous decisions. We adopt them for the award requested herein.

Marcel Hawiger. TURN asks the Commission to establish the hourly rate of Mr. Hawiger who joined TURN in August 1998. Mr. Hawiger graduated from law school in 1993 and has practiced law since then. The requested hourly rate for Mr. Hawiger is within the range of rates for attorneys with comparable experience and we adopt it here.

6. Award

We award TURN \$12,375.66 for contributions D.98-12-024. Consistent with previous Commission decisions, we will order that interest be paid on the

⁶ Cal. PUC § 1806.

award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request and continuing until the utility makes its full payment of award.

7. Allocation of Award Among Utilities

All of the award granted today shall be paid by SoCal, because it is the only utility affected by TURN's participation in this proceeding.

8. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.98-12-024 as set forth herein.
2. TURN requests hourly rates for its attorney and consultant that have already been approved by the Commission or which are reasonable under the circumstances.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$12,375.66 for contributions to D.98-12-024 in this proceeding.
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 \$12,375.66 as set forth herein for substantial contributions to Decision 98-12-024.

2. Southern California Gas Company shall, within 30 days of this order, pay TURN \$12,375.66 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 April 24, 1999 and continuing until the full payment has been made.

3. Application 97-03-015 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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