

Decision 99-08-006 August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C) and Pacific Bell Information Services to Notify the Commission to Enter the Electronic Publishing Services Market.

Application 93-11-031
(Filed November 12, 1993)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$36,334.12 in compensation for contributions to Decision (D.) 98-12-018. That decision addressed the application of Pacific Bell (Pacific) and Pacific Bell Information Services (PBIS) for approval of their plan to enter into electronic publishing services markets.

1. Background

This application requested authority to provide electronic publishing services in California markets and to enter associated revenues "below-the-line," that is, separate from regulated revenues. Parties submitted testimony but the Commission did not hold evidentiary hearings as a result of the disclosure by Pacific that a new affiliated company, PTEPS, rather than PBIS, would provide the service.

TURN filed this request for compensation on March 4, 1999 following issuance of D.98-12-018, which resolved outstanding issues in this proceeding. No party objects to TURN's request.

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. (All subsequent section cites are to the Pub. Util. 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 compensation and 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 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 (ALJ) issued a ruling on June 6, 1994, 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 various 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 alleging that the proposal to allow PBIS to provide electronic Yellow Pages could erode revenues from Pacific's printed directories and thereby lead to local service rate increases. The testimony pointed out that Pacific had already begun offering electronic publishing through another affiliate, PTEPS, although Pacific had not mentioned PTEPS in its application. Pacific filed a motion to strike testimony relating to

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).

PTEPS, disputing the relevance of PTEPS' offerings to the proceeding. TURN subsequently filed a motion to dismiss the application on the basis that Pacific had not provided enough information for the Commission to make an informed decision. The ALJ suspended hearings in order to address the legal issues raised in TURN's motion. In its brief, Pacific subsequently admitted that PBIS' plans had changed so that it would not offer electronic publishing. Pacific agreed with TURN that the application should be dismissed. The matter remained dormant for four years. On December 4, 1998, the Commission issued D.98-12-018, dismissing the application and stating the Commission's intent to defer ruling on the jurisdictional issues to another unspecified proceeding.

TURN made a substantial contribution in this proceeding by raising the issue of whether Pacific's application included all relevant information and by filing a motion to dismiss on the basis that the application was not complete. TURN convinced the Commission, and ultimately the applicant, that pursuing resolution of the application would be a waste of time and effort. TURN makes a reasonable case that it should be reimbursed for its work on all issues, even those which the Commission did not ultimately address. TURN had a reasonable expectation at the time it submitted its testimony that the Commission would address all issues. Although the Commission did not agree with TURN's view that Pacific had violated Rule 1 by failing to provide complete information in its application, we find that TURN should be reimbursed for raising the issue and addressing its relevance.

In sum, TURN made a substantial contribution to the resolution of the application.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$36,334.12

T. Long, Attorney:

80 hours @ \$215 (1994) \$17,200.00

R. Costa

4.5 hours @ \$125 (1993) 562.50

141.25 hours @ \$125 (1994) 17,656.25

P. Stein

6 hours @ \$85 (1999) 510.00

Telephone, copying, postage 405.37

Total \$36,334.12

5.1. Hours Claimed

As stated previously, TURN makes a reasonable argument that it should be reimbursed for all of its work in this proceeding. The hours TURN claims are considerably less than the 650 hours its NOI estimated for work in this proceeding.

5.2. Hourly Rates

Section 1806 requires the Commission to compensate 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 two attorneys and its Telecommunications Research Director.

T. Long. TURN seeks compensation for T. Long at an hourly rate which was approved by the Commission in D.94-09-022. The requested rates are therefore reasonable for purposes of this request.

⁶ Cal. PUC § 1806.

R. Costa. TURN seeks an hourly rate for R. Costa that was approved in D.95-08-051. We adopt it here for the award requested.

P. Stein. TURN seeks an hourly rate of \$170 for P. Stein, an amount which the Commission approved in D.98-08-016. Because Stein's work was dedicated to the preparation of this fee request, TURN discounts the rate by half, consistent with our policy.

5.3. Other Costs

TURN claims \$405.37 for costs relating to photocopying, postage, and related administrative activities, a reasonable sum which we adopt here.

6. Award

We award TURN \$36,334.12 for contributions to D.98-12-018. 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 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

The entire award granted today should be paid by Pacific because it is the only utility affected by TURN's participation in this proceeding.

Waiver of Comment Period

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 review and comment period is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.98-12-018 as set forth herein.

2. TURN requests hourly rates for its attorneys and consultant that have already been approved by the Commission and which are therefore reasonable.

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 \$36,334.12 for contributions to D.98-12-018 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 \$36,334.12 as set forth herein for substantial contributions to Decision (D.) 98-12-018.

2. Pacific Bell shall, within 30 days of this order, pay TURN \$36,334.12 plus interest at the rate earned on prime, three-month commercial paper as reported

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in the Federal Reserve Statistical Release, G.13, with interest beginning on May 19, 1999 and continuing until the full payment has been made.

3. Application 93-11-031 is closed.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners