

Decision 99-09-054 September 16, 1999

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

Application of Pacific Gas and Electric Company,  
for Recovery of 1996 Non-Nuclear Generation  
Capital Additions Costs.

Application 97-10-014  
(Filed October 3, 1997)

And Related Matters.

Application 97-10-015  
(Filed October 3, 1997)  
Application 97-10-024  
(Filed October 3, 1997)

**OPINION**

This decision grants The Utility Reform Network (TURN) an award of \$83,649.31 in compensation for its contribution to Decisions (D.) 98-05-059 and 99-03-055.

**1. Background**

In D.97-09-048, in the Electric Industry Restructuring rulemaking (R.) 94-04-031, the Commission ordered Pacific Gas & Electric (PG&E) and Southern California Edison Company (Edison) to file applications to seek recovery of 1996 capital additions to non-nuclear generating plant (capital additions) based on an ex post facto review of recorded expenditures. The Commission required the applications in order to satisfy the requirements of Pub. Util. Code Section 367, and also set forth certain criteria for evaluating capital additions. (All statutory citations are to the Pub. Util. Code.) PG&E and Edison filed these applications (A.) 97-10-014 and A.97-10-024, respectively, on October 3, 1997.

PG&E's application sought \$57.4 million in capital additions for 1996. The Office of Ratepayer Advocates (ORA), TURN, and James Weil filed protests to the application, recommending reductions in PG&E's request of about \$12.6 million generally on the basis that the investments were not cost-effective or necessary to maintain PG&E's plants. On March 25, 1998, during the course of hearings, PG&E, ORA, TURN, and Weil submitted a joint recommendation resolving all outstanding disputes in the proceeding. The joint recommendation proposed that all of PG&E's 1996 capital additions be considered reasonable with the exception of \$3.955 million. The Commission adopted the joint recommendation in D.98-05-059.

After four days of hearings the Commission ruled that Edison's application would be addressed in a separate decision.

The Commission subsequently resolved substantially all of the issues surrounding Edison's application in an interim opinion, D.99-03-055. Edison sought recovery of \$100.3 million in capital additions for 1996. TURN opposed recovery of \$25.6 million of the expenditures. After rejecting in part Edison's proposed methodology for determining cost-effectiveness of expenditures and adopting in part the methodology proposed by TURN and ORA, the Commission disallowed Edison recovery of \$4.5 million in capital additions.

The Commission also adopted TURN's proposal that certain of Edison's submissions for projects under \$500,000 be set aside because Edison had failed to provide adequate justification that these projects were cost-effective. The Commission stated that it would reopen the proceeding for the purpose of considering recovery for these projects once Edison had submitted proper evidence.

## 2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 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 timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in these proceedings by a ruling dated January 8, 1998. The same ruling found that TURN had demonstrated significant financial hardship.

### **4. Contributions to Resolution of Issues**

TURN claims it substantially contributed to D.98-05-059 and D.99-03-055, decisions that resolved issues surrounding applications for recovery of capital additions by PG&E and Edison, respectively.

TURN believes its contribution to D.98-05-059 lies in the detailed analysis which it undertook of PG&E's application. TURN claims that evidence of its contribution can be found in the extensive testimony presented by TURN to support its proposal that \$12.6 million of the capital additions claimed by PG&E be disallowed. That compiled testimony, claims TURN, was instrumental in the negotiated agreement reached by all of the parties.

We agree. Although the joint recommendation submitted by the parties and adopted by the Commission disallows \$3.9 million in costs, rather than the \$12.6 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 committed many hours to analyzing PG&E's application: in absence of the detailed data compiled by TURN, it is unlikely that PG&E would have agreed to those disallowances included in the settlement ultimately adopted by the Commission. We therefore find that TURN contributed substantially to D.98-05-059.

TURN also contends that it contributed substantially to D.99-03-055, which granted in part Edison's application for capital additions. TURN believes it contributed to that decision by persuading the Commission (1) to adopt a "cost-effectiveness" standard stricter than that prescribed by Edison, (2) to disallow \$4.5 million of the capital additions sought by Edison, and (3) to postpone recovery for certain of Edison's expenditures until Edison provides detailed evidence of the cost-effectiveness of those projects.

TURN alleges to have contributed in two ways to the Commission's resolution of the appropriate standard by which to judge the cost-effectiveness of capital additions. First, TURN persuaded the Commission to reject Edison's proposed capacity values, and to instead adopt the approach advocated by TURN and ORA, which is based upon Edison's own forecast of capacity for use in evaluating qualifying facility projects. Second, TURN states that it demonstrated that Edison's usage of "forced outage factors" to substantiate the utility's capacity predictions should not be allowed. In D.99-03-055, the Commission expressly adopted TURN's position on these issues. The application of the changes advocated by TURN resulted in a \$4.5 million reduction to Edison's recovery for capital additions. We therefore find that TURN substantially contributed to the Commission's resolution of these issues.

TURN also contends that it contributed to D.99-03-055 by pointing out to the Commission Edison's failure to demonstrate the cost-effectiveness for certain of its projects. After reviewing TURN's testimony, the Commission found that Edison failed to provide sufficient record evidence of the cost-effectiveness of over a dozen projects, for which Edison sought \$12.5 million in recovery. TURN petitioned the Commission to set aside that portion of Edison's application. The Commission granted TURN's request, holding that the proceeding may be reopened once Edison has submitted the required evidence.

In D.99-03-055, the Commission expressly adopted TURN's position on this issue as well as those discussed above. We therefore find that TURN made a substantial contribution to the Commission's review of Edison's application for recovery of capital additions.

**5. The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$83,649.31 as follows:

Attorney Fees

Robert Finkelstein	8.0 hrs. x \$235/hr.	\$ 1,880.00
	160.5 hrs. x \$250/hr.	\$ 40,125.00
	10.0 hrs. x \$125/hr.	\$ 1,250.00
Michael Florio	2.25 hrs. x \$275/hr.	\$ 618.75
Theresa Mueller	1.25 hrs. x \$195/hr.	\$ 243.75
Subtotal Attorney Fees		\$ 44,117.50

Expert Witness Fees and Expenses

William Marcus	40.75 hrs. x \$145/hr.	\$ 5,908.75
Jim Helmich	301 hrs. x \$100/hr.	\$ 30,100.00
Expert expenses		\$ 341.50
Subtotal Expert Fees		\$ 36,350.25

Other Costs

Photocopying		\$ 2,596.09
Postage		\$ 449.00
Fax charges		\$ 62.90
Phone expenses		\$ 73.57
Other Costs Subtotal		\$ 3,181.56

**TOTAL** **\$ 83,649.31**

### 5.1 Hours Claimed

In its Request for Compensation, TURN breaks down the hours claimed by time period, by proceeding,<sup>1</sup> by utility and by issue. TURN divides the sum total of its work on capital additions into three phases. The first phase covers TURN's work on PG&E's and Edison's efforts to obtain recovery for capital additions up to the point at which the Commission ordered the utilities to file separate applications. The second phase covers TURN's participation in discovery and negotiation in response to PG&E's and Edison's applications and up to submission of the joint recommendation on PG&E's application. The third phase encompasses TURN's efforts in litigating the Edison application. TURN's request thoroughly details the work done during each phase.<sup>2</sup> Given the scope of TURN's participation in the proceedings culminating in D.99-03-055 and D.98-05-059, we find the hours claimed and the breakdowns provided reasonable.

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<sup>1</sup> The issues resolved by D.98-05-059 and D.99-03-055 were initially raised in the electric industry restructuring docket (R.94-04-031/I.94-04-032). Later, after significant participation by TURN, the Commission ordered the utilities to file separate 1996 capital additions applications. TURN posits, and we agree, that it makes sense to seek compensation for all costs arising from its participation in the utilities' applications for capital additions in a single request. As a result, some of the work for which TURN seeks compensation was done prior to the filing of the applications resolved by D.99-03-055 and D.98-05-059.

<sup>2</sup> TURN's request also breaks down its participation in each phase by utility. TURN says that during certain phases, it was working mostly or entirely on the application of only one utility. It allocates its hourly costs as follows: phase 1: 62.5% to Edison, 37.5% to PG&E; phase 2: 50% to Edison, 50% to PG&E; phase 3: 100% to Edison. Given that there were two separate applications filed, one of which ended in a settlement, the other of which was litigated, we agree that allocation of TURN's hourly expenses by utility is fair and reasonable.

## **5.2 Hourly Rates**

TURN observes that the hourly rates requested for its attorneys are consistent with those already approved by the Commission in D.98-04-028, D.99-02-006 and D.98-04-028.

TURN seeks an hourly rate for its expert William Marcus consistent with that approved by the Commission in D.98-04-027. TURN also seeks compensation for expenses associated with the work of Jim Helmich. Helmich is a senior economist at JBS Energy and has a Masters degree in Civil Engineering from the University of California, Berkeley. He spent eight years on the staff of the California Energy Commission and has worked in the field of energy economics for almost 25 years. He has been compensated for contract work by the Commission's Consumer Services Division at a rate of \$110 per hour. We find the requested rate for Helmich of \$100 per hour on par with rates approved for persons with similar training and qualifications.

We adopt the hourly rates requested by TURN as they are reasonable and consistent with our past treatment of attorney and expert fees for comparable work.

## **5.3 Other Costs**

TURN requests \$3181.56 for other costs (e.g., copying postage, telephone) and \$341.50 for expenses incurred by its experts (primarily for travel). As TURN notes, the majority of these costs are associated with copying and distributing its pleadings. Based on the length and scope of TURN's participation in these proceedings, we find TURN's request for other costs to be reasonable.

## **6. Award**

We award TURN \$83,649.31, calculated as described above.



We assess responsibility for payment as recommended by TURN. Although we generally divide payment equally among participating utilities, the separate proceedings in the instant case as well as the information presented by TURN in its Request for Compensation convince us that responsibility for payment should be assessed based on the amount of time TURN spent working on each utility's application. Thus, based on TURN's detailed analysis and the record as a whole, we allocate payment of \$21,166.38 of the awarded amount to PG&E and \$62,482.93 of the payment responsibility to Edison.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 8, 1999 (the 75<sup>th</sup> day after TURN filed its compensation request) and continuing until the utility makes full payment.

As in all intervenor compensation decisions, we put TURN on notice that the Commission's Energy Division 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 has made a timely request for compensation for its contribution to D.99-03-055 and D.98-05-059.

2. TURN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. TURN contributed substantially to D.99-03-055 and D.98-05-059.

4. TURN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

5. The miscellaneous costs incurred by TURN 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 \$83,649.31 for its contribution to D.99-03-055 and D.98-05-059.

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 \$83,649.31 in compensation for its substantial contribution to Decision (D.) 99-03-055 and D.98-05-059.

2. Pacific Gas & Electric Company (PG&E) shall pay TURN \$21,166.38 within 30 days of the effective date of this order. Southern California Edison Company (Edison) shall pay TURN \$62,482.93 within 30 days of the effective date of this order. PG&E and Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve

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Statistical Release G.13, with interest, beginning August 8, 1999, and continuing until full payment is made.

3. Application (A.) 97-10-014, A.97-10-015 and A.97-10-024 remain open.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

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