

Decision 99-10-050 October 21, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to (i) establish its authorized rate of return on common equity, (ii) establish its authorized capital structure, and (iii) establish its overall rate of return for Calendar Year 1998.

Application 97-05-016
(Filed May 8, 1997)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$31,310.98 in compensation for its contribution to Decision (D.) 97-12-089. The requests of Ronald Knecht (Knecht) and Ray Czahar (Czahar) for intervenor compensation are denied.

1. Background

TURN, Knecht, and Czahar seek intervenor compensation for participation in Application (A.) 97-05-016 and contribution to D.97-12-089.

In D.97-12-089, the Commission established costs of capital for Pacific Gas and Electric Company (PG&E) for calendar year 1998.

On February 17, 1998, TURN, Knecht, and Czahar each timely filed a request within 60 days of the issuance of D.97-12-089 for a compensation award of \$39,872, \$38,529 and \$22,050, respectively, for contributions to D.97-12-089. Additionally, on February 17, 1998, Knecht and Czahar each filed a motion to amend their notice of intent to claim compensation. Also, on March 19, 1998, PG&E filed a response to TURN's request for intervenor compensation. On April 2, 1999, TURN filed a reply to PG&E's response.

2. Requirements for Awards of Compensation

In D.98-04-059, the Commission discusses extensively the requirements (Sections 1801-1812¹) for a utility customer to receive a compensation award under the intervenor compensation program. This decision follows the principles enunciated in D.98-04-059. This decision does not review the intervenor compensation program; instead it only addresses those issues raised by the particular facts and circumstances of the present requests for intervenor compensation. D.98-04-059 should be consulted for an in-depth review of the Commission's intervenor compensation program.

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 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 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,

¹ Division 1, Part 1, Chapter 9, Article 5 of the Pub. Util. Code. All section references herein are to the Pub. Util. Code.

“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 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 Contribution

TURN timely filed an NOI to claim compensation, and it was deemed eligible for compensation by administrative law judge (ALJ) ruling dated August 8, 1997. The requirements of Section 1804(a) have thus been met for TURN.

On August 11, 1997, Knecht and Czahar each filed a separate NOI to claim compensation. On February 17, 1998, Knecht and Czahar each filed a separate motion to amend their NOIs and each also provided, under seal, additional personal financial information. The February 17 filings of Knecht and Czahar also requested a protective order to ensure confidential handling of the personal financial information.

In a separate unrelated application, A.96-07-009 (filed on July 15, 1996), the ALJ determined in rulings dated March 31, 1998, and May 1, 1998, that both Knecht and Czahar, respectively, have shown eligibility under Section 1802(g). Because the rulings were issued within one year of the start of this proceeding, there exists a rebuttable presumption of eligibility for compensation pursuant to Section 1804(b)(1). Based on these rulings, we find that Knecht and Czahar have shown eligibility under Section 1802(g). The respective motions of Knecht and Czahar for a protective order for personal financial information filed under seal should be granted.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in three ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision.³ It may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ Finally, it may provide evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁵ The Commission reasonably has awarded compensation even when the position advanced by the intervenor is rejected.⁶

² Pub. Util. Code Section 1802(h).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See 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).

4.1. TURN

Although the Commission did not expressly adopt TURN's positions, TURN asserts that the Commission relied upon TURN's participation in issuing D.97-12-089. TURN contends that in D.97-12-089, the Commission relied upon TURN's testimony and briefs in "criticizing the showing made by PG&E in support of its application." We agree that in D.97-12-089, the Commission relies upon TURN's testimony in addressing PG&E's treatment of the risk premium model. Additionally, TURN's participation contributed to observations in D.97-12-089 that PG&E failed to mention the impact of the enactment of AB 1890 on the various risks to be considered in setting the authorized return on equity (ROE). In light of the whole record, TURN made a substantial contribution to D.97-12-089 through its participation in this proceeding.

4.2. Knecht and Czahar

In this proceeding, the compensation requests of Knecht and Czahar appear to be identical, word for word, regarding their claim of substantial contribution. Thus, this decision addresses these claims together.

In this proceeding, Knecht and Czahar advocated an approach for forecasting ROE that is beyond the scope of this proceeding. In D.97-12-089, we stated that:

"[Our] approach in determining ROE is to begin with the last authorized ROE for applicant, then use the recognized models and other pertinent information to gain information about the magnitude of ROE changes that are appropriate in light of current conditions. ... we have stressed the need for consistent bare-bones models with inputs that do not change markedly from year to year."

Knecht and Czahar have not followed the incremental approach for forecasting ROE. Instead of using recognized models, Knecht and Czahar presented

methodologies that are new and different from those utilized in the past by the Commission. D.97-12-089 states that we would "not entertain the KC [Knecht and Czahar] methodology at this time as it is beyond the scope of this proceeding." Thus, D.97-12-089 did not rely upon or adopt the methodology of Knecht and Czahar.

Regarding workshops, Knecht and Czahar echoed support for TURN's proposal to hold workshops to allow parties to explore methodologies for unbundling the cost of capital. However, independently, Knecht and Czahar advocated that workshops address their new methodologies. We stated in D.97-12-089 that the "...focus of the workshops ordered in this proceeding is to explore methodologies designed to unbundle the cost of equity/capital as opposed to addressing the methodologies advanced by KC in the context of the present proceeding." (*Id.*, mimeo., at p. 18.) Thus, D.97-12-089 also rejected the workshop proposal of Knecht and Czahar.

Knecht and Czahar also believe they made a substantial contribution to D.97-12-089 because the 11.2% adopted return on common equity reflects the 11.6% on equity that they proposed. It is not clear how 11.2 equates to 11.6, but regardless, even if the amounts were the same, the Commission in some way must have relied upon the work of Knecht and Czahar to find that they made a substantial contribution. Knecht and Czahar argue in their compensation requests that their "...showing was the most complete and comprehensive in every way, ... Further, our estimates were the most technically sophisticated, accurate and reliable ones..." The faith that Knecht and Czahar place in their work product is not sufficient to overcome the fact that D.97-12-089 explicitly found that the proposal made by Knecht and Czahar was beyond the scope of this proceeding and thus not relied upon.

In connection with their claim of substantial contribution for their testimony on return on equity/capital for common equity, Knecht and Czahar argue that they prevailed on a major issue, "the admissibility of our methods and showing." We do not consider admission of evidence a substantial contribution. The Commission neither relied upon the proposals of Knecht and Czahar nor adopted a specific policy or procedural recommendation.

Lastly, Knecht and Czahar rely on work performed in workshops subsequent to the issuance of D.97-12-089. Such work does not yet qualify for compensation. The workshops that Knecht and Czahar refer to are the workshops ordered in D.97-12-089 to be held in advance of the following year's cost of capital proceedings. Knecht and Czahar should seek compensation for any substantial contributions arising from their participation in workshops in the 1999 cost of capital proceedings.

We conclude that Knecht and Czahar have not shown that they have made a substantial contribution to this proceeding.

5. Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$39,872.98 for its contribution to D.97-12-089 as follows:

Attorney Fees

Robert Finkelstein:

62.25 hours x \$235 \$14,628.75

M.P. Florio:

.125 hours x \$275 \$ 34.38

Theresa Mueller:

1.75 hours x \$195 \$ 341.25

Expert Witness Fees

James Weil

119.2 hours x \$200 \$23,840.00

Witness Expenses \$ 244.19

Other Reasonable Costs

Photocopying expense \$ 684.40

Postage costs \$ 98.92

Phone expense \$ 1.09

Total \$39,872.98

Knecht requests an award of \$38,592.98 and Czahar requests an award of \$22,050. Since we find that neither Knecht or Czahar has made a substantial contribution to this proceeding and thus may not receive compensation, we do not address the reasonableness of the hours requested.

5.1. Hours Claimed

TURN's request for compensation notes that TURN pursued two sets of recommendations in this proceeding, (1) setting an authorized ROE and (2) the development and implementation of an "unbundled" distribution-only cost of capital. TURN's request acknowledges that it was not successful in convincing the Commission to adopt its second set of recommendations. Thus, TURN only seeks compensation for the substantial contributions it believes it made on ROE.⁷

TURN also submits that its hours should not be reduced for duplication of the showings of other parties. TURN argues that all customer representatives

⁷ With regard to the second set of issues, TURN's request for compensation notes that TURN has filed an application for rehearing on those issues, and therefore defers seeking compensation for time devoted to the second set of issues. In D.98-03-074, the Commission denied TURN's request for rehearing.

in this proceeding generally sought to have the Commission set the authorized ROE at a level below that requested by PG&E. Further, TURN believes that in an annual proceeding covering relatively discrete issues, every party makes more or less similar showings covering those issues. However, TURN believes that its showing was sufficiently distinct that the Commission should conclude that any duplication was kept to the minimum. In support of its position, TURN notes that after the proposed decision (PD) was issued, TURN was the only intervenor that pushed for further reductions in the authorized ROE in its comments and in ex parte communications with Commission advisors. TURN argues that as a result of this advocacy the Commission adopted a further 20 basis point reduction in ROE. TURN believes that its efforts on advocating a further 20 basis point reduction distinguishes TURN from other parties. Consequently, TURN concludes that no reduction should occur for duplication.

In reviewing TURN's contribution to D.97-12-089, we find that TURN has sufficiently distinguished itself from other parties. Thus, TURN's hours should not be reduced for duplication.

However, although this decision finds that TURN made a substantial contribution to D.97-12-089, this decision also finds that some of the positions advocated by TURN were explicitly rejected in D.97-12-089. For instance, D.97-12-089 found that TURN offered a *total ROE study* rather than the *single year incremental study* instructed by our decisions and followed by PG&E, ORA, and DOD. In its request for compensation, TURN argues that it could not take an incremental approach simply because TURN did not participate in the cost of capital proceedings in 1996. Further, TURN concludes that it would be neither fair nor consistent with the intervenor compensation statutes to reduce TURN's compensation because TURN was not an active party in last year's proceeding.

TURN's argument lacks merit. It is fair and consistent with the intervenor compensation statutes to reduce or deny TURN compensation for submitting testimony inconsistent with Commission instructions. Contrary to TURN's assertion, such a reduction would not equate to a reduction for TURN not being an active party in a prior proceeding. Additionally, TURN's argument is flawed because, in essence, TURN's argument asks the Commission to modify a prior Commission decision, i.e., rely upon a total ROE study instead of a single year incremental study.

PG&E's response notes that TURN's request lacks specific billing data for TURN's expert. To qualify for compensation, claimants must provide the same standard of documentation for all persons for whose work they seek compensation.

However, it does not appear that the Commission required TURN to provide such detailed billing information for experts prior to 1998. In a recent Commission decision, D.99-08-005, the ALJ's draft decision reduced TURN's compensation for not providing detailed billing data on its expert. In its comments on the draft decision preceding D.99-08-005, TURN pointed out that prior to 1998, the Commission did not require detailed information for its expert JBS, Inc. In D.99-08-055, the Commission acknowledged TURN's claim as valid and increased TURN's award.

Similarly, in this proceeding, we believe that the lack of specificity regarding TURN's expert results from TURN's application of a prior practice. In this instance, based on the date TURN filed its request, we make an exception to the specificity of information now required and grant TURN compensation for

its expert witness based on the information provided⁸. However, in all future filings, TURN should provide detailed billing data for its experts (which seems to be TURN's current practice).

In light of the whole record and in recognition of TURN's contribution, the number of hours claimed by TURN is reduced by 20% to reflect those positions not adopted by the Commission. With this adjustment, the hours claimed by TURN are reasonable.

5.2. Hourly Rate

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

5.3. Time Spent Preparing Compensation Request

TURN requests compensation for time preparing its compensation request at the full attorney rate of \$235 per hour. Consistent with usual Commission practice, this decision grants half of the professional hourly wage, or \$117.50 per hour, for time spent drafting the compensation request. Thus, the 11.25 hours attributed to preparation of the compensation request are compensated at \$117.50.

5.4. Other Costs

The \$784.41 in costs TURN claims for such items as postage, photocopying, and telephone calls are a small percentage of its request and are

⁸ TURN represents that it has allocated Weil's time consistent with the allocation applied to its attorney time. Further TURN represents that for Weil's hours it has removed 24.9 hours devoted to unbundling issues and reduced by half the number of hours attributed to general preparation.

reasonable in light of the work TURN accomplished in the proceeding. We grant TURN's request for these costs.

5.5. Award

We award TURN for its contribution to D.97-12-089 as follows:

Attorney Fees

Robert Finkelstein:

40.80 hours x \$235 \$ 9,588.00

11.25 hours x \$117.50 \$ 1,321.88

M.P. Florio:

.10 hours x \$275 \$ 27.50

Theresa Mueller:

1.40 hours x \$195 \$ 273.00

Expert Witness Fees

James Weil

95.36 hours x \$200 \$19,072.00

Witness Expenses \$ 244.19

Other Reasonable Costs

Photocopying expense \$ 684.40

Postage costs \$ 98.92

Phone expense \$ 1.09

Total \$31,310.98

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 3, 1998, the 75th day after TURN filed its compensation request and continuing until the utility makes full payment of the award.

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.

6. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure.

On October 12, 1999, TURN filed comments on the draft decision. TURN alleges that the draft decision's reduction for hours attributable to TURN's use of a total ROE analysis commits factual and legal error.

TURN's comments confirm that TURN did not provide a single year incremental study for 1998. Further, TURN does not appear to dispute the Commission's directive for this proceeding that parties should use a single year incremental study. Additionally, TURN does not challenge the fact that D.97-12-089 did not rely upon TURN's total ROE analysis. Instead, TURN contends that in order to use a single year incremental study that TURN would have to conduct a study for the 1997 cost of capital in order to have a baseline to compare to the outcome of its study for the 1998 cost of capital. In other words, TURN would run the same model, but use different assumptions for the prior year. TURN asserts that this approach would have caused TURN to incur substantial costs. Further, TURN believes that:

"the Commission would frown upon running two separate 'single year incremental studies,' one of which would have addressed the prior year's cost of capital, ... and would likely find the costs associated with the 1997 study unreasonably incurred."

Thus, TURN concludes that total ROE approach was the only alternative left for TURN to participate.

We disagree with TURN's premise that the Commission would disallow costs for producing a single year incremental study since the Commission explicitly asked for such a study. Assuming TURN produced a single year incremental study and it substantially contributed to a Commission decision, then TURN would be entitled to recover all reasonably incurred costs. If it was necessary to run the same model with two different sets of input, and TURN made a substantial contribution, we see no basis for why we would deny TURN compensation. Thus, no changes are made to the draft decision based on TURN's comments.

Findings of Fact

1. TURN, Czahar, and Knecht has each made a timely request for compensation for their contribution to D.97-12-089.
2. TURN has made a showing of significant financial hardship.
3. Knecht and Czahar have each shown financial hardship under § 1802(g).
4. TURN made a substantial contribution to D.97-12-089.
5. Czahar has not made a substantial contribution to D.97-12-089.
6. Knecht has not made a substantial contribution to D.97-12-089.
7. The number of hours claimed by TURN should be reduced by 20% to reflect TURN's positions not adopted by the Commission.
8. TURN's documentation of expert witness costs is consistent with past practice.
9. Future requests for expert witness costs should include detailed billing information.

10. TURN requests hourly rates for its attorneys and consultant that have already been approved by the Commission or are reasonable under the circumstances.

11. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812 which govern awards of intervenor compensation.

2. Czahar, and Knecht have not fulfilled all the requirements of Pub. Util. Code §§ 1801-1812 which govern awards of intervenor compensation.

3. The hours claimed by TURN are reasonable when reduced by 20%.

4. TURN's expert witness costs as modified herein are reasonable.

5. TURN should be awarded \$31,310.98 for its substantial contribution to D. 97-12-089.

6. Czahar should not be awarded compensation for his participation in this proceeding.

7. Knecht should not be awarded compensation for his participation in this proceeding.

8. The motions of Knecht and Czahar for a protective order for personal financial information filed under seal should be granted.

9. 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 \$31,310.98 in compensation for its substantial contribution to Decision (D.) 97-12-089.

2. Ray Czahar (Czahar) is denied intervenor compensation for his participation in this proceeding.

3. Ron Knecht (Knecht) is denied intervenor compensation for his participation in this proceeding.

4. The motions of Knecht and Czahar for a protective order for personal financial information filed under seal are granted.

5. Pacific Gas and Electric Company shall, within 30 days of the effective date of this order, pay TURN \$31,310.98 plus interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest beginning May 3, 1998 and continuing until full payment is made.

6. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

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