

Decision 99-11-049 November 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Verification, Consolidation and Approval of
Costs and Revenues in the Transition Revenue
Account.

Application 98-07-003
(Filed July 1, 1998)

And Related Matters.

Application 98-07-006
Application 98-07-026
(Filed July 1, 1998)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$22,227.94 in compensation for its contribution to Decision (D.) 99-06-058.

1. Background

In this proceeding, the Commission addressed issues related to: (1) allocation of direct access costs, (2) allocation of transition costs, (3) power exchange (PX) pricing, and (4) ratemaking. There were seven days of evidentiary hearing.

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 Sections 1801-1812. (All statutory citations are to 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 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,

"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 Section 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 this proceeding by a ruling dated

October 13, 1998. The same ruling found that TURN had demonstrated significant financial hardship.

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

According to TURN, it made a substantial contribution to D.99-06-058 as follows:

A. Cost Allocation and Rate Design

TURN joined the Office of Ratepayer Advocates (ORA) in urging the Commission to allocate restructuring implementation costs on an equal cents per kilowatt-hour basis, rather than on the Equal Percentage of Marginal Cost (EPMC) or system average percentage (SAP) method proposed by the utilities.

¹ Pub. Util. Code Section 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).

Although the Commission did not adopt the equal cents per kilowatt-hour allocation TURN proposed, it clearly agreed with factual assertions underlying TURN's position.⁶ (D.99-06-059, p. 7.)

B. PX Pricing Issues

TURN addressed three specific issues related to PX pricing. In each case, the Commission adopted an outcome consistent with the position TURN had taken, and in some cases specifically cited TURN's position in doing so.

The first issue on which TURN made a substantial contribution on PX pricing was the appropriate calculation of the PX credit. Some marketers sought substantial changes to the PX credit, while the utilities urged maintaining the existing structure of the credit. TURN, along with the Department of General Services (DGS) and ORA, advocated less extensive changes to the credit. Specifically, on "internally managed costs," TURN joined with the other parties in proposing that the PX credit should recognize procurement costs. The Commission ordered the utilities to include the long run marginal costs of these functions in future PX credit calculations. (D.99-06-058, p. 24, Finding of Fact (FOF) 10, Conclusion of Law (COL) 3.) For "externally managed costs," TURN, DGS and ORA all opposed including PX start-up costs in the PX credit, based primarily on the fact that the PX costs were part of the overall creation of the restructured and competitive electricity market in California. The Commission rejected the proposals to include the start-up and development costs in the PX credit, and the first reason cited for that rejection was that "The implementation

⁶ TURN filed for rehearing on this issue. TURN states it has not included in this compensation request any hours or expenses associated with filing its application for rehearing.

of direct access would not have been possible without the implementation of the PX." (*Id.*, at 26, FOF 11-12, COL 4.)

The second PX pricing issue TURN addressed was the mechanism for estimating certain ex-post market costs. The modified calculation was first proposed by San Diego Gas & Electric Company (SDG&E), and ultimately supported by a number of other non-utility parties. The Commission directed Southern California Edison Company (Edison) to incorporate the change to its PX rate calculations as well, consistent with the position advocated by TURN and a number of other parties. (*Id.*, at 29, FOF 15, COL 9.)

The third and final PX pricing issue was whether ex-post expenses should be incorporated in the PX credit based on time of use. TURN joined Commonwealth Energy Corporation (Commonwealth) in urging the Commission to adopt a time-of-use method for all utilities, arguing that failure to do so would create unnecessary pricing distortion. The Commission directed Pacific Gas and Electric Company (PG&E) and Edison to incorporate the change advocated by TURN and Commonwealth, but did not direct SDG&E to do so at this time. (D.99-06-058, p. 31, FOF 16, COL 9.)

C. Other Ratemaking Issues

TURN addressed two issues that the Commission addressed in the "other ratemaking issues" section of the decision. The first such issue was the treatment of the Devers Palo Verde 2 costs. TURN alone challenged Edison's request to recover \$3.352 million in costs associated with this transmission project that Federal Energy Regulatory Commission (FERC) had previously disallowed. The Commission adopted TURN's position as being the appropriate outcome, and reduced Edison's request for Transition Cost Balancing Account (TCBA) recovery. (D.99-06-058, pp. 31-33, FOF 17, COL 10.)

The second issue in the "other" category on which TURN made a substantial contribution is the PG&E proposal to create an "incremental tax memorandum account." TURN challenged this proposal as "a remnant of the era of balancing account ratemaking." The Commission agreed with TURN, and rejected PG&E's proposal. (D.99-06-058, p. 36, FOF 22, COL 13.)

We agree that TURN has made a substantial contribution to D.99-06-058 in the areas it identifies. We adopted TURN's proposals in whole or in part and benefited from TURN's policy discussion on all of those issues which it addressed.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$22,227.94 as follows:

Attorney Fees

Robert Finkelstein	26.5 hours x \$250 = \$ 6,625.00
	12.5 hours x \$125 = \$ 1,562.50
Michel P. Florio	39.0 hours x \$300 = \$11,700.00
	2.5 hours x \$150 = \$ 375.00
Theresa Mueller	5.0 hours x \$195 = \$ 975.00
	Subtotal = \$21,237.50

Expert Witness Fees and Expenses

JBS Energy, Inc.	
William Marcus	1.50 hours x \$145 = \$217.50

Other Reasonable Costs

Photocopying expense	= \$ 615.60
Postage costs	= \$ 154.64
Fax charges	= \$ 2.70
	Subtotal = \$ 772.94
TOTAL	= \$22,227.94

5.1 Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for its representatives with a brief description of each activity. The hourly breakdown presented by TURN reasonably supports its claim for total hours. We note that TURN used its resources efficiently and took all reasonable steps to keep duplication of the work of other parties to a minimum. We agree that in light of the breadth of issues involved in this proceeding, some duplication was unavoidable. However, in light of TURN's contribution to this proceeding, no reduction of compensation is warranted.

5.2 Hourly Rates

a. Michel P. Florio

TURN is requesting for the first time in this proceeding the establishment of Florio's hourly base rate for work performed during the fiscal year July 1, 1998 through June 30, 1999. The requested base rate is \$300 per hour, reflecting an increase of \$10 per hour (3.5%) over the \$290 base rate approved for Florio's work in fiscal year 1997-98 (D.98-12-058, p. 17).

According to TURN, its request for a new hourly fee level of \$300 for Florio's work as an attorney for the 1998-99 fiscal year is based on "the market rates paid to persons of comparable training and experience who offer similar services" (Pub. Util. Code Section 1806). TURN provided a summary of the available evidence on market rates for attorney services with the objective of determining a reasonable hourly fee that is reflective of the range of market rates.

Given Florio's level of experience and his responsibilities as TURN's Senior Attorney, as well as his experience on the ISO and PX Governing Boards (which proved particularly useful in this proceeding), we agree that he should be evaluated as a senior partner, falling within the upper half of the reported range for partners. The *Of Counsel* survey reported a range of partner

rates of from \$110 to \$650 per hour. Excluding the outliers on each end, the average low-end rate is \$220, the average high-end rate is \$399, and the average partner rate is \$309 per hour. The Commission has previously set Florio's rate in relation to this average figure (D.96-08-040, p. 56). We agree the rate that TURN is requesting here for Florio is reasonable by this standard measure of market rates. TURN's proposed rate of \$300 per hour for Florio's services in fiscal year 1998-99 should be approved.

b. Robert Finkelstein

TURN requests an hourly rate of \$250 for work performed by Finkelstein in 1998. The Commission has previously awarded compensation at this rate for Finkelstein's work in 1998. (D.99-02-006, p. 7.) TURN requests that the Commission apply the same rate for the work performed in 1998. TURN also asks the Commission to apply that 1998 rate to the relatively small number of hours of Finkelstein's time for work performed in 1999 for which TURN seeks compensation in this proceeding. We agree.

c. Theresa Mueller

TURN requests an hourly rate of \$195 for work performed by Mueller in this proceeding. The Commission has previously awarded compensation at this rate for Mueller's work in 1996-97. (D.98-08-016, p. 16; D.99-02-006, p. 7.) Due to the small number of hours of Mueller's time for which TURN seeks compensation in this proceeding, TURN requests that the Commission use the 1996-97 rate as a basis for compensation. We agree.

d. JBS Energy, Inc. Staff

TURN seeks to recover the \$217.50 in costs billed to it by JBS Energy, Inc. (JBS), the consulting firm that provided a very small amount of expert witness services to TURN in this proceeding. Early in the process of

identifying the issues, TURN's attorneys consulted with William Marcus, Principal Economist for JBS, during a telephone conference.

We agree that the total sought for expert witness expenses represents a reasonable hourly rate applied for the small amount of work Marcus devoted to preparing for and participating in that meeting. The \$145 hourly rate for work performed by Marcus in 1998 has been approved in a number of previous Commission decisions, including D.98-04-027.

5.3 Other Costs

TURN requests \$772.94 for photocopying expense, postage costs and Fax charges. Considering the scope of this proceeding, we agree that the amount is reasonable.

6. Award

We award TURN \$22,227.94, calculated as described above.

We will assess responsibility for payment equally among PG&E, Edison and SDG&E, per the method first adopted in D.95-09-034.

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 October 22, 1999, (the 75th day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Energy Division may audit TURN's records related to this award. Thus, TURN's 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 rates, 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 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 has made a timely request for compensation for its contribution to D.99-06-058. 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.

2. TURN contributed substantially to D.99-06-058.

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

4. TURN request for a rate of \$300 per hour for attorney Florio's services in fiscal year 1998-99 is reasonable.

5. TURN has requested hourly rates for attorneys Finkelstein and Mueller and expert Marcus that have already been approved by the Commission.

6. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

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

2. TURN should be awarded \$22,227.94 for its contribution to D.99-06-058.

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 \$22,227.94 in compensation for its substantial contribution to Decision 99-06-058.
2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) shall each pay TURN their pro rata portion of the total award of \$22,227.94 within 30 days of the effective date of this order. PG&E, Edison and SDG&E shall also pay 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 October 22, 1999, and continuing until full payment is made.

This order is effective today.

Dated November 18, 1999, at San Francisco, California.

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