

Decision 99-12-005 December 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for authority, among other things, to decrease its rates and charges for electric and gas service, and increase rates and charges for pipeline expansion service.

(Electric and Gas) (U 39 M)

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation into the rates, charges, and practices of PACIFIC GAS AND ELECTRIC COMPANY.

Investigation 95-02-015
(Filed February 22, 1995)

OPINION AWARDING COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of \$47,796.00 in compensation for its contribution to Decision (D.) 99-06-080, the decision that addressed the Pacific Gas and Electric Company (PG&E) response to the severe wind and rainstorms of December 1995 (the Storm Damage Decision).

1. Background

In the Storm Damage Decision, we directed PG&E to pay a total of \$85,000 in fines. We fined PG&E \$20,000 for its unreasonable handling of the support and maintenance of its outage information systems. We fined PG&E \$5,000 for its failure to adequately staff customer service representatives. We found PG&E acted unreasonably in processing some of its claims related to the storm, and fined it \$60,000. We directed PG&E to record all storm-related damage claims below the line, change its claims procedure, modify the wording on its monthly

bills regarding how to file a claim, and provide certain reports to our staff. We also adopted some of the agreements, submitted in the form of joint testimony, reached among the Office of Ratepayer Advocates (ORA), the Consumer Services Division's Utility Safety Branch (USB), and PG&E. Finally, we discussed General Order (GO) 95, our Rule for Overhead Electric Line Construction. We stated that we will open a rulemaking to determine the appropriate wood pole minimum safety factor for certain grades of pole and the appropriate relationship between the safety factor and subsequent additions to existing wood poles; that PG&E should cancel portions of its internal design guidelines; and that until completion of the rulemaking, the interim wood pole loading minimum safety factor that we adopted in D.98-10-058 – 2.67 – would continue to apply.¹

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 statutory citations 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 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 See D.98-10-058, mimeo., pp. 72-75.

“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.

In D.98-04-059, we comprehensively reviewed our compensation program. We set and reviewed our policies regarding the request for compensation requirements and generally described the responsibilities of the customer seeking compensation.

3. NOI to Claim Compensation and Timeliness of Request

TURN earlier established its eligibility for compensation in this proceeding when we were considering PG&E’s General Rate Case. In D.96-05-052, the Commission awarded TURN \$147,164 for its contribution to D.95-12-055 and D.95-09-073. Having established its eligibility in that earlier phase of this proceeding, TURN remains eligible to claim compensation in this phase, where we considered PG&E’s response to the December 1995 storms. (See Rule 76.76 of our Rules of Practice and Procedure.)

TURN filed its Request for Compensation on August 27, 1999. The decision was mailed June 28, 1999. Pub. Util. Code § 1804(c) allows the filing of a request within 60 days of the issuance of the decision. TURN filed its Request on the 60th day. TURN's Request is timely.

4. Contributions to Resolution of Issues

TURN asserts that it made a substantial contribution through its participation on the issue of PG&E's outage information system and call centers performance during the December 1995 storms. It argues that the evidence it submitted in Exhibit 512 is discussed at length in the decision (D.99-06-080, mimeo., at 20-22, 48-65), and is embodied in Findings 19-33, Conclusions of Law 26-29, and Ordering Paragraphs 22 and 23. TURN notes that the Commission did not adopt TURN's remedy, but rather, the Commission clearly based its decision on the unique evidence and argument produced by TURN.

We agree. We relied on TURN's testimony and argument in directing PG&E to pay the \$20,000 and \$5,000 fines, and in guiding PG&E to improve its preparedness for and performance in future storms. TURN made a substantial contribution to D.99-06-080.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$52,796.42 as follows:²

Attorneys	hours	hourly rate	
Finkelstein	11	\$250.00	\$ 2,750.00
	10	\$125.00	\$ 1,250.00
Corr	96.5	\$240.00	\$23,160.00
Subtotal Attorneys			\$27,160.00

Experts and Consultants			
Schilberg	241.4	\$100.00	\$24,140.00
Marcus	2.5	\$140.00	\$ 350.00
Helmich	4.5	\$ 40.00	\$ 180.00
Rusovan	0.25	\$ 80.00	\$ 20.00
Subtotal Experts and Consultants			\$24,690.00

Miscellaneous Costs	
Copying	\$ 743.75
Postage	\$ 136.51
Transportation Expense	\$ 43.00
Telephone and FAX	\$ 23.16
Subtotal Other Costs	\$ 946.42
Total Request	\$52,796.42

² In its request, TURN seeks \$53,322.52. By letter dated October 13, 1999, however, TURN advised us of an error in its calculation. The subtotal of costs attributable to Experts and Consultants sums to \$24,690.00, and not \$25,216.10 as shown in its filing. Correcting for this error results in a total request of \$52,769.42.

5.1. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Pub. Util. Code § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo., at 31-33, and Finding of Fact 42). In that decision we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

The phase of this proceeding that culminated in D.99-06-080 addressed the reasonableness of PG&E storm response. At stake for PG&E was whether the Commission would find its storm response reasonable, affirming its management practices, or in the alternative, directing PG&E to take corrective action and assessing fines. At stake for PG&E's customers was ensuring only reasonable costs were recovered in rates and identifying actions to be taken to reduce the likelihood of future extensive, costly, unsafe, and inconvenient outages. Unfortunately, TURN did not address the overall benefits to ratepayers of its participation relative to the compensation it requests.

We find TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized. Through TURN's participation, the Commission had a record on which to assess the reasonableness of PG&E's management of its outage information system and call centers performance, to guide its preparedness and performance in the future, and to direct the payment of \$25,000 in fines. It is difficult to put a dollar figure

on the benefits TURN realized for ratepayers, aside from the \$25,000 fine. However, we feel that the benefits realized by TURN's participation outweigh the costs it claims for that participation.

5.2 Hours Claimed

TURN provides documentation showing the specific tasks performed by attorneys Finkelstein and Corr. TURN did not allocate time and task by issue, although it did offer to provide that level of detail if asked. We caution TURN that to not provide the more detailed information as a matter of routine places TURN at risk for failing to comply with our requirements. Merely offering the required allocation of costs and time by task and substantive issue is not enough.

This is not the first time that TURN has provided a minimal amount of information in ostensible compliance with Commission directives and merely noted a willingness to supplement its request. This unfortunate tendency has the effect of delaying eventual awards of compensation and wasting the limited time of our staff in preparing and mailing rulings requesting the additional information. TURN, an organization frequently involved with Commission proceedings, can hardly be unaware of the Commission's guidelines on issue allocation. We have noted for over a decade that where an issue allocation is feasible, it should be provided. (See, for example, D.85-08-012 (allocation guidelines); D.88-08-055 (TURN admonished for failing to allocate issues where clearly feasible); D.90-09-080 (intervenor reproached for failing to follow clear instructions requiring issue allocation); D.95-03-007 (failure to allocate hours by issue resulted in estimate and reduction).)

TURN has specifically been cautioned to comply with this requirement: "[A]llocation of time by issue is a requirement for an award of

intervenor compensation in all but the most extraordinary circumstances.”

(D.96-08-040, mimeo., at 34. See also D.98-03-065, mimeo., at 7.) In still another decision, we warned TURN that the practice of merely offering to supplement where issue allocation was deemed necessary by the Commission after the filing of the request was unacceptable:

TURN did not provide an allocation of its costs or hours by issue. TURN stated in its [request] that it could provide such an allocation in response to an ALJ request... TURN should not again expect us to have to ask for an allocation of costs by issue. In the future, we expect TURN to provide an allocation of costs and hours by issue in all of its requests for compensation filed subsequent to the effective date of this order.

(D.96-06-029, mimeo., at 20.) Clearly, TURN has been made aware of this requirement and has been provided ample opportunity to conform its compensation requests accordingly. In this instance, we find TURN's participation was largely on the two issues for which we find it made a substantial contribution – outage information system and call centers performance - and therefore do not need the greater detail for the hours claimed by its attorneys (which include allocation by task, but not issue). The hours TURN claimed for its attorneys are reasonable.

However, a substantial portion of TURN's request – nearly half – results from the experts and consultants costs it incurred for participation in this proceeding. TURN provides no information on what work was performed by the consultants and experts who spent about 6 weeks working on the proceeding full time. TURN provides no copy of an invoice or bill from its experts and consultants which might shed some light on the tasks and issues they addressed. A quick review of the record reveals that TURN relied on consultants to prepare and present testimony on failures of PG&E's outage information systems, the

volume of calls, the outage information systems and field response, and other factors affecting PG&E's storm response. TURN's witness appears to have testified for perhaps 1 hour.³

Six weeks of full time work on the part of the consultant to prepare and present the testimony, absent any allocation of the time by task and substantive issue, and absent any argument on the reasonableness of the hours claimed, appears excessive. Given the numerous cautions TURN has received about providing this allocation, we will exercise our judgement and reduce the hours to a level we regard reasonable.

In comments on the draft of this decision, TURN acknowledges the lack of argument supporting this portion of its request and the lack of detailed records. It argues that it was not until 1998, two years after the work in question was performed, that the Commission first directed TURN to provide more detailed information to support compensation for work performed by this consultant, JBS Energy. In light of this, TURN argues that a smaller reduction, perhaps 10%, would be sufficient.

It may be true that 1998 marked the first time the Commission cautioned TURN regarding supporting detail associated with work performed by JBS Energy. In 1996, we cautioned TURN regarding supporting detail associated with work performed by others (D.96-08-040, mimeo., at 57-58). But even this caution came while the work performed in this proceeding was

³ Contrary to TURN's reading, we do not wish to imply that the quality of its witness' work may be evaluated by the time that witness is subjected to cross-examination. We merely intend to state what we can about how the consultant's time was spent given the absence of an affirmative showing by TURN.

underway. Given the timing, we agree with TURN that a smaller reduction is appropriate. The hours claimed for Schilberg should be reduced to 191.4.

5.3. Hourly Rates

The hourly rates shown above were all previously approved by the Commission for comparable work, performed in 1996. We approved the \$250/hour rate for Finkelstein for work performed in 1998 in D.99-02-006, mimeo., at 7; we approved the \$240/hour rate for work performed by Corr in 1996 in D.98-04-025, mimeo., at 7; the \$100 and \$140 rates for Schilberg and Marcus, respectively, for work performed in 1996 were approved in D.97-10-026, mimeo., at 9; the \$40/hour rate for work performed in 1996 by Helmich was approved in D.98-02-016, mimeo., at 14; and the \$80 rate for work performed by Ruzovan in 1996 was approved in D.97-05-070, mimeo., at 7. It is reasonable to apply those rates here.

5.4. Miscellaneous Costs

The miscellaneous costs claimed are for expenses related to participation in the proceeding. TURN explains these expenses in its Request and argues that they are reasonable. We agree.

6. Award

We award TURN \$47,796.00 for its substantial contribution to D.99-06-080. Consistent with previous Commission decisions, we will order that interest be paid on the award amount. Our general practice is to order interest to be paid from the 75th day after a completed request was filed, and to apply the three-month commercial paper rate. The completed request was filed on August 27, 1999, making the 75th day November 10, 1999.

TURN argues that in this case, the Commission should compute interest on the award from January 1, 1997. It supports this request by pointing out that

although this matter was submitted on July 25, 1996, the proposed decision required by Pub. Util. Code § 311(d) was not published until January 15, 1999. Section 311 requires the proposed decision to be filed with the Commission and served on all parties without undue delay, not later than 90 days after submission. However, the proposed decision in this matter was served on parties 27 months after the statutory deadline for its publication. TURN argues that in the normal course of business, the proposed decision would have been ripe for decision on or after November 22, 1996, and may have been held for one or more meetings, and thereby proposes the January 1, 1997 date.

TURN regards this interest treatment as a remedy for undue delay in the issuance of the proposed decision akin to the mechanisms the Commission has applied, like attrition adjustments, which account for the time value of money and the effects of inflation. It proposes we apply the "balancing account rate, compounded monthly." TURN does not specify what that rate is, or argue why it should be applied, rather than the three-month commercial paper rate we generally apply.

We agree with TURN that it is fair and reasonable in this case to award interest commencing on a date derived from a schedule that better matches our normal course of business. The amount of time that passed from the submission of this phase to adoption of a decision on which a request for compensation could be made exceeded that allowed in Pub. Util. Code § 311(g) and was unusually long. However, we disagree that January 1, 1997, is the date from which interest should be calculated. Assuming the Commission adopted a decision on January 1, 1997, a completed request for compensation would have been due no later than 60 days subsequent, or approximately March 1, 1997. In the normal course of business, interest would commence the 75th day after that,

or May 15, 1997. Therefore, we direct that interest be paid on the award amount commencing May 15, 1997, at the three-month commercial paper rate.

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 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 TURN, the applicable hourly rates, and any other costs for which compensation may be claimed.

7. Comments on Draft Decision

The draft decision of the Assigned Administrative Law Judge in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by TURN.

Findings of Fact

1. TURN has made a timely request for compensation for its contribution to D.99-06-080.
2. TURN contributed substantially to D.99-06-080 through its participation on the issue of the reasonableness of PG&E's management of its outage information system and call centers performance, the related fines, and in guiding PG&E to improve its preparedness for and performance in future storms.
3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.
4. TURN has requested hourly rates for work performed by its attorneys, experts, and consultants that were previously adopted and applied by the Commission for comparable work. It is reasonable to apply those previously-adopted rates to work performed in this proceeding.

5. TURN provides no information on what work was performed by the consultants and experts who spent about 6 weeks working on the proceeding full time. Absent any allocation of the time by task and substantive issue, and absent any argument on the reasonableness of the hours claimed, the hours claimed for experts and consultants appears excessive. The hours awarded for expert witness Schilberg should be reduced to 191.4 to arrive at a reasonable level.

6. The miscellaneous costs incurred by TURN are reasonable.

7. The amount of time that passed from the submission of this phase to adoption of a decision on which a request for compensation could be made exceeded that allowed in Pub. Util. Code § 311(g) and was unusually long. It is fair and reasonable in this case to award interest commencing on a date derived from a schedule that better matches our normal course of business.

Conclusions of Law

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

2. TURN should be awarded \$47,796.00 for its contribution to D.99-06-080. TURN should earn interest on that award amount, calculated at the three-month commercial paper rate, commencing May 15, 1997, and continuing until full payment of the award is made.

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) should be awarded \$47,796.00 for its substantial contribution to Decision (D.) 99-06-080. TURN should earn interest

A.94-12-005, I.95-02-015 ALJ/BAR/mrj**

on that award amount, calculated at the three-month commercial paper rate, commencing May 15, 1997, and continuing until full payment of the award is made.

2. Pacific Gas and Electric Company (PG&E) shall pay TURN the award within 30 days of the effective date of this order. PG&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 May 15, 1997, and continuing until full payment is made.

3. Application 94-12-005 and Investigation 95-02-015 remain open for the purpose of addressing the limited rehearing of D.95-12-055 and D.98-12-096 granted in D.99-09-031.

This order is effective today.

Dated December 2, 1999, at San Francisco, California.

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