

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-158
Administrative Law Judge Division

R E S O L U T I O NAward of Compensation for Participation
in Advice Letter No. 1610 Proceedings

By Advice Letter No. 1610, dated March 5, 1986, and pursuant to Section 491 of the Public Utilities Code, SoCal Gas requested a temporary deviation from the rates for service and sales volumes of gas provided under contracts then in effect for service in accordance with Rate Schedule GN-5, GN-5A, G-60, G-61, and Resolution No. G-2664 to Southern California Edison Company, Department of Water and Power, Burbank Public Service Department, Glendale Public Service Department, Pasadena Water and Power Department, Imperial Irrigation District, Long Beach Gas Department, and San Diego Gas & Electric Company.

Customers served under those schedules informed SoCal Gas, and SoCal Gas believed, that the continuing precipitous drop in the world oil prices made it uneconomical to use natural gas for utility electric generation at the currently authorized rates.

In order to keep its customers SoCal Gas proposed to provide service to its existing UEG customers served under Rate Schedules GN-5, GN-5A, G-60, G-61, and Resolution No. G-2664 based on a spot market price of \$2.05 per MMBtu for equivalent volumes plus a margin return of not less than \$0.20 per MMBtu, totaling \$2.25 per MMBtu under a special contract.

The term of the proposed contract was for thirty days. The contract provided that the customer would use natural gas and not oil during the contract term unless required in its judgement to meet an operating emergency or its testing requirements.

Comments were received from various parties including Toward Utility Rate Normalization (TURN). After review of all comments the Commission issued Resolution G-2668 dated March 12, 1986 granting the request of SoCal Gas. TURN then requested \$4,786.82 in fees and costs for work done in commenting on the advice letter. SoCal Gas protested an award on the grounds that TURN did not substantially contribute towards Resolution G-2668 and, if fees are to be awarded, the amount claimed is excessive.

Our Rules of Procedure (Rule 76.51 et seq.) and PU Code Sections 1801 et seq. provide that in appropriate matters advocate's fees and costs may be awarded in a "hearing or proceeding" before the Commission. Advice letter filings are "proceedings" before the Commission. SoCal Gas has not questioned our authority to award fees in advice letter filings, but we mention it because this is a case of first impression. Neither our Rules nor the statute sets forth a clear procedure to claim and determine awards in proceedings which are not hearings, while there is an extensive procedure to claim and determine awards in hearings. This lack of clarity should not be used to defeat the purpose of awarding fees in this case. In this instance, TURN has made a timely request and has complied with our Rules to the extent possible. We do not consider this case a precedent for future filings in advice letter proceedings, and we will examine further our interpretation of the statute in this regard.

In a prior proceeding we have found that for 1986 TURN's participation in Commission proceedings without an award of fees or costs imposes a significant financial hardship (D.86-02-039). In this proceeding we find that TURN's presentation did not materially duplicate the contribution of any other party to the proceeding, although there was some overlapping. We find TURN eligible to claim compensation.

Resolution G-2668 sets forth the substantial contribution of TURN to this proceeding. The discussion portion of the resolution analyzed TURN's comments, adopted some and rejected others, which clearly affected the resolution's ultimate findings and ordering paragraphs. For example, TURN's suggestion that SoCal Gas achieve a \$0.30 MMBtu margin on UEG sales foreshadowed Ordering Paragraph 3 "SoCal Gas shall make every effort to secure a margin contribution of \$0.30 per MMBtu from UEG sales by April 1, 1986"; and we found merit in TURN's suggestion "that the balancing accounts for SoCal's wholesale customers must be 'trued up' so that SoCal's customers do not subsidize discount sales to the UEG load of SoCal's wholesale customers." Other examples could be cited.

Although TURN is entitled to fees, we believe the amount requested, \$4,786.82, is too high. TURN's request is based upon 24 attorney hours at \$170 per hour and 4 negotiating hours by its executive director at \$170 per hour, plus miscellaneous costs of \$26.82. TURN's attorney's proposed hourly rate of \$170 consists of a base fee of \$145 and an "enhancement" of \$25. In a recent fee awards to TURN

for its contribution to the SoCal Gas and SDG&E CAN offset proceedings (A.85-09-034 and A.85-09-045), we awarded compensation at a base rate of \$150 per hour. Participation in an advice letter filing has similar time constraints and complex subject matter. The executive director's portion of the request will be denied because she was neither an advocate nor an expert witness in this proceeding. Since the resolution relies only on TURN's contribution through comments, "enhancement" in this context has no meaning. We will not award a bonus.

An attorney fee award is rarely susceptible to exact quantification. In the final analysis the award is subject to the sound discretion of the Commission. We must determine if the 24 attorney hours were reasonably spent (Serrano v Unruh (1982) 32 C 3d 621).

An examination of the filings of TURN and PSD shows that the basic recommendation of each was that the Commission send the proper signal to gas suppliers and producers that the Commission will not protect them from competition from oil. PSD would reject the filing outright; TURN would also reject the filing unless certain conditions it proposed were adopted. Those conditions were not adopted. Although differing in detail, the thrust of some of TURN's arguments overlapped those of PSD's: that SoCal's margin was inadequate and the proposed rate would be subsidized by other customer classes. But details are important and there is no question that the Commission benefitted from TURN's contribution. For example, TURN's comments clearly illustrated that gas from El Paso and Transwestern was not marketable to UEG customers. This was a critical factor in our deliberations on SoCal's advice letter, and resulted in our requiring SoCal to "take whatever actions necessary to ensure that on April 1, the gas, both spot and system supplies, which it purchases through the El Paso and Transwestern systems is, on the average, marketable to SoCal's UEG customers." (See Resolution G-2668 at p. 10, Ordering Paragraph 2.)

On other occasions we have reduced an award because of overlap (D.86-07-009); we will do so here. Additionally, we have considered the hours claimed and related them to what our experience shows us to be a reasonable number. We have considered literally thousands of advice letter filings of varying degrees of complexity and the comments filed in response to those letters. We believe we have a reasonable concept of the effort required to comment on an advice letter such as No. 1610 and based upon our experience we believe that 24 hours, in this instance, was somewhat excessive. Considering the overlap of issues and arguments in the advice letter comments, we find that a reasonable fee would be based upon 20 hours of an advocate's time or \$3,000, plus costs of \$26.82, for a total of \$3,026.82. This result is not inconsistent with the conclusion we reached in D.86-03-043 where TURN sought attorney fees on the Montezuma coal sale issue and we awarded TURN 50% of its request, despite the fact that we did not adopt TURN's recommendation, because we felt that TURN had made a substantial contribution to the issue.

Findings of Fact

1. TURN requested compensation of \$4,786.82 by petition filed April 4, 1986, based on its participation in Advice Letter No. 1610 of SoCal Gas which resulted in Commission Resolution G-2668 dated March 12, 1986.
2. TURN made a substantial contribution to the determination of Resolution G-2668, which did not duplicate the presentation of any other party. However, there was significant overlap.
3. The 24 attorney hours claimed is unreasonable; 20 attorney hours is a reasonable amount. TURN is entitled to compensation for 20 hours, plus costs.
4. A base hourly rate of \$150 per hour is consistent with past awards and is reasonable.
5. No enhancement of the hourly rate is called for in this case because TURN submitted only the advocacy of its attorney and no testimony was advanced by its attorney acting as an expert witness.
6. TURN is not entitled to an award for hours spent by its executive director, who was neither an advocate nor an expert witness.
7. TURN is entitled to compensation of \$3,026.82 plus interest from the 76th day after the filing of the request for compensation until the date paid.

Conclusion of Law

SoCal Gas should be ordered to pay TURN compensation of \$3,026.82 plus interest.

IT IS RESOLVED that within 30 days from the effective date of this Order, Southern California Gas Company shall pay Toward Utility Rate Normalization \$3,026.82 plus interest from June 19, 1986 to the date paid, calculated using the interest calculation of the Gas Balancing Account of SoCal Gas. SoCal Gas may recover this amount in its next proceeding adjusting base rates.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on December 17, 1986. The following Commissioners approved it.

DONALD VIAL
President
VICTOR CALVO
FREDERICK R. DUDA
STANLEY W. HULETT
Commissioners



Executive Director