

Decision 00-10-014 October 5, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking for Electric
Distribution Facility Standard Setting.

(U 39 E)

Rulemaking 96-11-004
(Filed November 6, 1996)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$92,005.99 in compensation for its contribution to Decision (D.) 00-05-022.

1. Background

D.98-07-097 in this proceeding adopted final rules to govern utility planning for, and responses to, emergencies and major power outages. It also stated the Commission's intent to hold hearings on three related issues; standards for call center performance, standards and incentives for restoration times, and the use of communications facilities, referred to as Response Information Management System (RIMS) technologies. RIMS was later dropped as an issue.

The utilities served direct testimony on July 16, 1999. The Office of Ratepayer Advocates (ORA) and TURN served joint direct testimony on August 19, 1999. The utilities served rebuttal testimony on September 22, 1999. Thereafter, the Commission held two days of evidentiary hearings and received opening and reply briefs.

At the beginning of the evidentiary hearings, TURN, ORA, San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) offered a joint proposal that represented a compromise they had reached. The only active party opposing the joint proposal was Pacific Gas and Electric Company (PG&E).

D.00-05-022 adopted restoration criteria and call center standards proposed jointly by TURN, ORA, SDG&E, and SCE. The adopted standards established rebuttable presumptions of reasonableness applicable to utility responses to major weather-related outages. Utilities with less than 150,000 electric customers are excluded.

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 after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's¹ planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

¹ To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. TURN timely filed its request for an award of compensation on July 10, 2000, and amended it on July 17, 2000. Under § 1804(c), an intervenor requesting compensation must 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 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 § 1806.

3. Eligibility to Claim Compensation

TURN was found to be eligible for compensation and was awarded compensation for its contribution to prior decisions in this proceeding by D.98-12-006.

4. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision,³ or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ 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.⁵

TURN represents that it made a substantial contribution to D.00-05-022. TURN states that it participated in procedural disputes that led to the holding of workshops, as TURN and other parties recommended. TURN participated actively in the workshops. Prior to hearings, TURN prepared and served joint testimony with ORA. TURN participated in settlement discussions with the other parties that ultimately led to the Joint Proposal by TURN, ORA, SCE, and SDG&E. During the hearings, TURN provided a witness in support of the Joint

² Pub. Util. Code § 1802(h).

³ *Id.*

⁴ *Id.*

⁵ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (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).

Proposal. D.00-05-022 closed the proceeding with the adoption of the Joint Proposal.

We agree with TURN's representation (which no party challenges) and conclude that TURN made a substantial contribution to D.00-05-022.

5. Reasonableness of Requested Compensation

TURN requests an award of \$92,005.99 as follows:

- Attorney Fees

Robert Finkelstein	9.0	hours X \$250	= \$ 2,250.00
	120.75	hours X \$265	= \$31,998.75
	10.5	hours X \$132.50	= \$ 1,391.25
Michel P. Florio	0.5	hours X \$300	= \$ <u>150.00</u>
		Subtotal	= \$35,790.00

- Expert Witness Fees and Expenses

JBS Energy, Inc.			
William Marcus	7.67	hours X \$150	= \$ 1,150.50
Gayatri Schilberg	28.75	hours X \$105	= \$ 3,018.75
	443.96	hours X \$110	= \$48,835.60
Greg Ruszovan	5.3	hours X \$95	= \$ 503.50
JBS Expenses			<u>\$ 1,596.39</u>
		Subtotal	= \$55,104.74

- Miscellaneous Costs

Attorney travel			= \$ 415.00
Photocopying			= \$ 441.40
Postage			= \$ 61.65
Fax			= \$ 52.80
Federal Express/Delivery			= \$ 11.00
Phone			= \$ 95.65
Lexis			= \$ <u>33.75</u>
		Subtotal	= \$ 1,111.25
		Total	= <u>\$ 92,005.99</u>

For Finklestein, TURN requests an hourly rate of \$250 for work done in 1998, and \$265 for 1999. TURN also asks to use the 1999 rate for the small amount of work done in 2000. TURN notes that it does not waive its right to request a higher rate for 2000 in other proceedings. We have previously approved these rates (D.00-02-008) and shall use them here. We note that TURN correctly uses half of Finkelstein's hourly rate in 2000 for the time he spent preparing TURN's compensation request.

For Florio, TURN requests an hourly rate of \$300 for the small amount of work done in fiscal year 1999-2000. This is the rate the Commission previously approved for fiscal year 1998-1999. TURN notes that it does not waive its right to request a higher rate for 2000 in other proceedings. We have previously approved this rate (D.00-02-008) and shall use it here.

For Schilberg, TURN requests an hourly rate of \$105 for 1998 and \$110 for 1999. We have previously approved these rates (D.00-05-006) and shall use them here.

For Marcus, TURN requests an hourly rate of \$150 for 1999. We have previously approved this rate (D.00-02-008) and shall use it here.

For Ruzovan, TURN requests an hourly rate of \$95. TURN represents that Ruzovan is a Senior Energy Analyst with a B.S. degree and over 15 years of experience. TURN states that Ruzovan's credentials and experience compare favorably with expert witnesses for which the Commission has awarded equal or higher rates. TURN's proposed hourly rate is comparable to rates we have used for expert witnesses with similar qualifications (D.00-05-006). We will use the proposed rate.

The number of hours claimed by TURN in this proceeding appears consistent with the extent of its participation in the proceeding. TURN's work

products included joint testimony with ORA and participation with ORA and other parties in the Joint Recommendation. The efforts appear to have been well coordinated with minimal overlap. We find no evidence that there was any substantial duplication of effort.

The miscellaneous costs incurred by TURN are less than two percent of the total request. This is a minimal amount given the level of TURN's participation in this proceeding. We will approve these costs.

6. 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 § 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 requirement 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.

In D.00-05-022, we adopted restoration and call center standards that establish rebuttable presumptions of reasonableness applicable to utility responses to major weather-related outages. TURN asserts that it is hard to assign a value to the benefits of the standards. TURN states that when future emergencies cause major outages, ratepayers will benefit because the standards will have encouraged the utilities to maintain their emergency preparedness, and the standards will assist the Commission in its reviews of the utilities' responses to the outages.

We initiated this rulemaking because we believed that standards were needed. We adopted the standards proposed by TURN and other parties. While the benefits are hard to quantify in dollar terms, the implementation of these standards should result in substantial savings to ratepayers by virtue of improved utility responsiveness to outages. We, therefore, conclude that TURN's participation was productive.

7. Award

We award TURN \$92,005.99, calculated as described above.

We will assess responsibility for payment among PG&E, SCE, SDG&E, PacifiCorp, Sierra Pacific Power Company, and Southern California Water Company according to each utility's share of their total 1999 retail sales of electricity in California, measured in kilowatt hours. This method was adopted in D.98-12-006 in this proceeding.

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 September 23, 2000 (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 Commission staff may audit its 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.

8. Waiver of Public Review and Comment

Pursuant to Rule 77.7(f)(6) of our Rules of Practice and Procedure, 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.00-05-022.

2. TURN's request is unopposed.

3. TURN was found eligible for compensation and was awarded compensation in this proceeding by D.98-12-006.

4. TURN contributed substantially to D.00-05-022.

5. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.

6. TURN has requested hourly rates for attorneys and experts that have previously been approved by the Commission and/or are no greater than the market rates for individuals with comparable training and experience.

7. Ninety-five dollars per hour is a reasonable compensation rate for Ruzovan's professional services considering his education, experience, and the rates paid other experts with comparable qualifications.

8. The miscellaneous costs incurred by TURN are reasonable, given the level of its participation.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812 that govern awards of intervenor compensation.

2. TURN should be awarded \$92,005.99 for its contribution to D.00-05-022.

3. Per Rule 77.7(f)(6), the public review and comment period for this compensation decision may be waived.

4. 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 \$92,005.99 in compensation for its substantial contribution to Decision 00-05-022.

2. Within 30 days of the effective date of this order, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, PacifiCorp, Sierra Pacific Power Company, and Southern California Water Company (utilities) shall each pay TURN a share of the award, based on each utility's share of the utilities' total 1999 retail sales of electricity in California, measured in kilowatt hours. The utilities 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 September 23, 2000, and continuing until full payment is made.

3. The public review and comment period for this decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated October 5, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners