

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) to Establish Marginal Costs, Allocate.

A.08-03-002  
(Filed March 4, 2008)

In the Matter of the Application of Southern California Edison Company (U338E) for Authority To Make Various Electric Rate Design Changes.

A.07-12-020  
(Filed December 21, 2007)

**ORDER DENYING REHEARING OF DECISION 10-05-015**

**I. INTRODUCTION**

On June 2, 2010, we issued Decision (D.) 10-05-015, *Decision Granting Request of The Utility Reform Network for Intervenor Compensation for Substantial Contributions to Decision 09-08-028*, concerning the Southern California Edison (SCE) general rate case (GRC) for Test Year 2009.<sup>1</sup> D.10-05-015 awarded \$71,703.47 to intervenor The Utility Reform Network (TURN), for its substantial contributions to D.09-08-028. TURN had claimed \$82,855 for its contributions. The reason for the disallowance is because TURN failed to comply with Commission Rules of Practice and Procedure, rule 17.4(b), with respect to the claim concerning Garrick Jones of JBS Energy, TURN’s expert witness.<sup>2</sup> TURN claimed 177.8 hours at a rate of \$120 per hour

<sup>1</sup> Citations herein are to the pdf electronic versions of the Commission’s decisions. Electronic versions of Commission decisions issued after July 2000 can be found on the Commission’s website at: <http://www.cpuc.ca.gov/PUC/documents>.

<sup>2</sup> Hereinafter, all references to the Commission’s Rules of Practice and Procedure are to rule.

for Jones in 2008 (for a total of \$21,321.60). D.10-05-015 awarded it for 84.75 of those hours (for a total of \$10,170.00). (D.10-05-015 at p. 5.)

TURN timely filed an application for rehearing of D.10-05-015. TURN alleges that the disallowance constitutes arbitrary and capricious decision-making and is thus prohibited by Public Utilities Code section 1757(a)(1). (TURN application for rehearing at p. 1, fn 1, and p. 6.) TURN contends that the showing it provided “in support of the compensation attributable to the work of JBS Energy was consistent with the showing [it] had made in a request for compensation submitted under very nearly identical circumstances” in Phase 1 of the proceeding, and thus, had no reason to know it was out of compliance with rule 17.4(b). (TURN application for rehearing at p. 1.) No responses to the application for rehearing were filed.

After careful consideration of all the arguments presented by TURN’s application for rehearing of D.10-05-015, we are of the opinion that good cause for rehearing has not been demonstrated. Accordingly, TURN’s application for rehearing of D.10-05-015 is denied.

## **II. DISCUSSION**

TURN argues that the requests for compensation it filed in Phases 1 (in Application (A.) 07-11-011) and 2 in A.08-03-002 of the instant proceeding, “shared a number of ... characteristics” regarding analysis and preparation; but TURN does not point to any factual errors in the reasoning. (TURN application for rehearing at p. 2.) In its claim for compensation for Phase 2, TURN provided specific descriptions of other JBS Energy consultants’ activities, e.g. “revise DR per Haley’s questions,” or “conference call on commercial submetering.” (See e.g., Attachment 1 of TURN’s October 26, 2009 claim and proposed decision on intervenor compensation in A.08-03-002 at pp. 3 and 5.) However, TURN provided no specific description of Jones’ activities, e.g., “RECC” or “replacement costs.” (Attachment 1 of TURN’s October 26, 2009 claim and proposed decision on intervenor compensation at p. 4.) In its Phase 1 (A.07-11-011) claim for compensation, TURN’s description of Jones’ work was not the same as Phase 2; the Phase 1 claim provided some description of the activities Jones

performed, e.g., “expense analysis” or “workers compensation testimony prep.” (Attachment 3 of TURN’s May 18, 2009 claim and proposed decision on intervenor compensation in A.07-11-011 at pp. 5-6.)

TURN argues that the number and ratio of pre-testimony hours sought for Jones and Marcus are very comparable in Phases 1 and 2, and that the level of detail in the pre-testimony hours awarded for Jones’ work in Phase 1 was not materially different than the level of detail for the Phase 2 hours claimed. (TURN application for rehearing at pp. 4-5.) However, TURN’s Phase 1 claim for compensation provided more information about the specific work Jones did. Unlike the earlier Phase 1 request for compensation, prepared by TURN’s Haley Goodson, TURN’s Phase 2 request, prepared by Michael Florio, failed to provide a description of the percentage of time Jones worked on various issues/subjects, and does not provide information that was similar to that described in TURN’s Phase 1 claim concerning JBS Energy consultants. (Cf “Allocation of JBS Energy Hours by Activity/Issue” section of TURN’s May 18, 2009 claim and proposed decision on intervenor compensation in A.07-11-011 at p. 20, comment 5.) Because TURN was awarded compensation for every hour it claimed for Jones’ work in Phase 1, TURN contends the disallowance in D.10-05-015 was arbitrary and capricious. The challenged decision provided:

We note that most of *Jones’ time records fail to describe the specific task “performed” indicating only issues or subjects* (for example, “Replacement Costs” or “Marginal Costs” or “RECC & PVRR factor”, etc.) This constitutes only partial compliance with Rule 17.4(b) of the Commissions Rules of Practice and Procedure, it also makes it appear as if Jones performed his work in the total isolation from the work of other representatives and without producing any outcome. Since he did not present any written or oral testimony, in the absence of information on his communications or written materials addressed to other individuals, it is not clear how his work contributed to the settlement and decision. We hope that in its future requests, TURN will comply with Rule 17.4, as it has been doing in the majority of its previous requests.

(D.10-05-015 at p. 8, emphasis added.)

Rule 17.4 concerns requests for compensation. Subsection (b) provides:

- (b.) The request for compensation shall include time records of hours worked that identify:
- (1) the name of the person performing the task;
  - (2) the specific task performed;
  - (3) the issue that the task addresses, as identified by the intervenor; and
  - (4) the issue that the task addresses, as identified by the scoping memo, if any.

(Rule 17.4(b).)

D.10-05-015 based the award for Jones' work on other TURN supporting records that showed Jones had worked with other TURN or JBS Energy personnel on the proceeding. (D.10-05-015 at p. 8.) It also reasoned that Bill Marcus spent approximately 16.50 hours on the Marginal Cost Theory and Quantification (MC) issue and that the 158.9 hours Jones spent on it were "excessive, especially, in the absence of a clear indication to what extent his work contributed to Marcus' testimony or our decision." (D.10-05-015 at p. 8.)

Pursuant to Public Utilities Code section 1803, intervenor awards must be reasonable and based on a substantial contribution to the decision and on financial hardship. Further, intervenors are required to "maintain and provide an account of the costs to tasks performed and issues in the proceeding." (*Rulemaking on the Commission's Intervenor Compensation Program*, D.06-12-041 at p. 12.) In addition, "the appropriate level of identification of task and issue will depend on the complexity of the proceeding...." (*Rulemaking on the Commission's Intervenor Compensation Program*, D.06-12-041 at p. 12.) Because TURN's records for Jones' work failed to describe the specific task performed, as required by rule 17.4(b), we could not base an award on the unsupported claimed hours ("... we assume that Jones' 158.93 hours were spent to provide input to Marcus' testimony"). (D.10-05-015 at p. 8.) "The total allowed

Jones' hours—84.75 consist of 66.00 hours for Jones' work done, assumingly, towards Marcus' testimony and 18.75 hours spent on document production.” (D.10-05-015 at p. 8.) The 66 hours represented “approximately four times more hours than Marcus ... spent on the MC issues in his testimony.” (D.10-05-015 at p. 8.)

It is within the Commission's discretion to determine what costs are reasonable under the intervenor statute. (See e.g., *Rulemaking on the Commission's Intervenor Compensation Program*, D.06-12-041 at p. 12.) Nothing in the argument presented by TURN establishes that our rationale for the disallowance was erroneous. After review each and every argument presented by TURN we are of the opinion that there is no merit to the allegations presented.

**THEREFORE, IT IS ORDERED that:**

1. The application for rehearing of Decision 10-05-015 is denied.
2. Application 08-03-002 and Application 07-12-020 are closed.

This order is effective today.

Dated October 28, 2010 at San Francisco, California.

MICHAEL R. PEEVEY  
President  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

Commissioner Dian M. Grueneich,  
being necessarily absent, did not  
participate.