

Decision 02-09-040 September 19, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters. (U 904 G)

Application 00-06-023
(Filed June 15, 2000)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$28,626.20 in compensation for substantial contributions to Decision (D.) 02-06-023, issued in Phase 2 of the Gas Cost Incentive Mechanism (GCIM) proceeding for Southern California Gas Company (SoCalGas).

1. Background

In D.02-06-023, the Commission considered whether the GCIM should be extended and, if so, what modifications to the mechanism would be desirable. After substantial negotiations, SoCalGas, TURN and the Office of Ratepayer Advocates (ORA) entered into a Settlement Agreement in which the parties proposed that the GCIM be extended with modifications that would apply starting with Year 7. TURN filed joint testimony and numerous pleadings in response to opposition from Southern California Edison Company (SCE) and the Southern California Generation Coalition (SCGC). The Commission adopted the Settlement Agreement with only one modification to the storage target variance.

TURN filed this request for compensation on August 9, 2002, following issuance of D.02-06-023. No party has opposed TURN's request.

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. Pub. Util. Code § 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. TURN has complied with the NOI requirements. By ruling dated June 25, 2001, Administrative Law Judge (ALJ) Walker found that TURN was eligible to file for an award of intervenor compensation in this proceeding. 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 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.

3. Contributions to Resolutions of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. 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.

In this proceeding, TURN co-sponsored the Settlement Agreement that was approved by the Commission. The Commission adopted the arguments of the settling parties and concluded that "the evidence at hearing overwhelmingly supports continuation of the GCIM with the modifications proposed by SoCalGas, ORA and TURN." (D.02-06-023, at 15.)

The decision summarizes TURN's position and cites with favor the testimony of TURN witness Michel Florio. The Commission additionally ordered a future investigation into the 2000/2001 border price spikes. Rather than pursuing this investigation in the GCIM proceeding (as advocated by SCE), the Commission agreed with TURN that this type of investigation should take place in a broad generic proceeding.

The intervenor compensation statute explicitly includes "alternative dispute resolution procedures" in the definition of a "proceeding." (Pub. Util. Code § 1802(f).) The Commission has recognized that the use of settlements creates some difficulties in determining a particular intervenor's contribution, since Rule 51.9 of the Rules of Practice and Procedure precludes disclosure of settlement discussions. (*See* D.01-03-030, at 6.) Nevertheless, it is clear on the

record that TURN participated actively in negotiations and in the drafting of certain provisions of the Settlement Agreement. TURN filed separate testimony in support of the Settlement Agreement, and it participated actively in the motion practice, the two days of hearing, and the briefing that followed hearing. In particular, TURN addressed the issues of core procurement costs and core ratepayer benefits, and D.02-06-023 relied on that evidence in concluding that the GCIM served the interests of five million core customers of SoCalGas.

The benefit to core customers can be quantified in this proceeding by comparing the shareholder award requested by SoCalGas for Year 7, based on the GCIM formula at the time of filing, with the shareholder award calculated under the new GCIM formula approved in D.02-06-023. Due to the cap on shareholder award in the Settlement Agreement, the Year 7 award was reduced from \$106.1 million to \$30.8 million, resulting in core ratepayers keeping an additional \$75.3 million of the benefits from gas costs falling below the benchmark. Moreover, this amount captures only the benefit from Year 7. As is apparent from the recently filed application for the Year 8 shareholder award, the Settlement Agreement will result in additional benefits to ratepayers in the order of more than \$50 million.

In sum, the Commission adopted TURN's recommendations on several major issues. While there was some unavoidable repetition in arguments of the settling parties responding to objections by SCE and SCGC, TURN's participation focused primarily on the core perspective, and TURN's pleadings emphasized the issue of core versus noncore storage and the benefits to core customers from the GCIM. We find that TURN has demonstrated that it made a substantial contribution to D.02-06-023.

4. Reasonableness of Requested Compensation

TURN requests compensation for all of the time and expenses reasonably devoted to its participation in this proceeding, for a total request of \$28,636.20, including \$27,817.50 for attorney time and \$818.70 for direct expenses.

For attorney time, TURN seeks \$18,945 for the work of attorney Marcel Hawiger, \$6,422.50 for the work of Michel Florio, and \$2,450 for the work of Randolph Wu. For Hawiger, this includes 93.5 hours billed at \$190 per hour in 2001 and \$200 per hour in 2002. Florio claims 14.5 hours billed at \$350 an hour in 2001 and 3.5 hours billed at \$385 in 2002. Wu claims 7 hours billed at \$350 in 2001. Other costs claimed include photocopying expense of \$615.80, postage costs of \$51.78, LEXIS service charges of \$128.30, and phone/telefax charges of \$22.82, totaling \$818.70.

4.1 Hours Claimed

TURN has presented its attorney's hourly records in an appendix to the request for compensation. The information reflects the hours devoted to reviewing the settlement documents, drafting testimony, analyzing opposition testimony, participating in hearing, and preparing briefs. Consistent with Commission policy, TURN billed only one-half of the hours related to the compensation request. The hours TURN claims are reasonable. As TURN observes, the Commission has granted TURN compensation for all of its claimed costs even in cases where the Commission did not adopt all of TURN's recommendations. D.93-10-074 found that full compensation was justified because TURN allowed the Commission to consider "a broad range of well-developed policy options necessary to make a fully informed decision." For the same reason, we find TURN's request for attorney hours to be reasonable in this case.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.”

TURN seeks compensation for Florio at the rate of \$350 per hour for work in 2001, a rate adopted by the Commission in D.02-06-070, and TURN asks that the rate be increased to \$385 per hour for work in 2002. Hawiger’s rate of \$190 per hour for work in 2001 was authorized by the Commission in D.01-10-008, and TURN asks that this rate be increased to \$200 per hour for work in the year 2002. TURN also asks that the Commission adopt an hourly rate of \$350 for Wu in 2001.

TURN justifies the increased attorney fee rates by citing the most recent *Of Counsel* Annual Survey of the Nation’s 700 Largest Law Firms, including rates for major firms in San Francisco. That survey shows that for 2000/2001, the average high-end rate for partners was \$399 for 1999, and rose to \$441 for the year 2000, with an average partner rate in 2000 of \$356, up 15% from the 1999 average.

TURN notes that Hawiger joined the organization in August 1998 and has worked on energy-related cases at the Commission, focusing on issues related to natural gas and demand side management. He has been TURN’s lead attorney on two Biennial Cost Allocation Proceedings, the Gas Industry Restructuring Proceeding, the Interruptible Rulemaking, and several energy efficiency proceedings. He obtained his law degree from New York University school of Law in 1993, and he has bachelor’s and master’s degrees in geology and environmental engineering.

Florio has practiced before the Commission on energy-related issues for more than 20 years. He was admitted to the California Bar in 1978 after earning

his law degree from New York University School of Law and a master's degree in public affairs from the Woodrow Wilson School of Public and International Affairs at Princeton. In mid-1990, he was named TURN's Senior Attorney, with supervisory responsibility for all of TURN's legal advocacy. In recent years, Florio has been selected by Governor Davis to serve on the governing boards for both the Power Exchange (PX) and the Independent System Operator (ISO). TURN comments that given his level of experience and his responsibilities at TURN, as well as his experience on the ISO and PX governing boards, Florio should be evaluated as a high-end senior partner, falling within the upper half of the reported range for partners.

Like Florio, Wu has been continuously engaged in practice on energy-related issues for more than 20 years. He was admitted to the California bar in 1977 after receiving his law degree from Boalt Hall at the University of California, Berkeley. From 1977 through 1981, Wu served as staff counsel at the Commission. In 1981, he became an ALJ at the Commission, serving in that role until 1988, presiding over a variety of gas and electric applications and cases. In 1988, Wu joined El Paso Natural Gas, representing that company before state and federal regulatory agencies. From 1997 through 2000, Wu engaged in merchant plant development for El Paso Merchant Energy, focusing on the development and financing of two plants in Massachusetts and Connecticut. He joined TURN in an of-counsel role in 2001. TURN states that Wu's experience in the specialized area of utility regulation and his market experience in plant development justify a rate in the upper range for partners.

Based on the experience of these attorneys and a comparison to market rates for attorneys of similar experience and qualifications, we agree with TURN that it is reasonable to award a rate of \$190 per hour in 2001 for Hawiger,

increasing to \$200 per hour in 2002; a \$350 rate for Florio in 2001, increasing to \$385 for work in 2002; and a rate of \$350 for Wu for his work in the year 2001.

4.3 Other Costs

TURN claims \$818.70 for costs relating to photocopying, postage and related administrative activities, a reasonable sum that we adopt.

5. Award

We award TURN \$28,626.20 for contributions to D.02-06-023. 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 the 75th day after TURN filed this compensation request (*i.e.*, October 21, 2002) and continuing until the utility makes full payment of the award.

6. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.02-06-023 as set forth herein.
2. TURN requests hourly rates for its attorneys that have already been approved by the Commission or are reasonable based on a comparison to market rates for attorneys of similar experience and qualifications.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$28,626.20 for contributions to D.02-06-023 in these proceedings.
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 \$28,626.20 as set forth herein for substantial contributions to Decision 02-06-023.
2. Southern California Gas Company shall, within 30 days of this order, pay TURN \$28,626.20 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest beginning on October 21, 2002, and continuing until full payment has been made.

This order is effective today

Dated September 19, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0206023
Proceeding(s):	A0006023
Author:	ALJ Walker
Payer(s):	Southern California Gas Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	8/9/02	\$28,636.20	\$28,636.20	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001	\$190
Marcel	Hawiger	Attorney	The Utility Reform Network	\$200	2002	\$200
Michel	Florio	Attorney	The Utility Reform Network	\$350	2001	\$350
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Randolph	Wu	Attorney	The Utility Reform Network	\$350	2001	\$350