

Decision 07-10-014

October 4, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Long-term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms.

Application 06-04-012
(Filed April 11, 2006)

ORDER MODIFYING
DECISION (D.) 07-05-043, AND DENYING REHEARING
OF DECISION, AS MODIFIED

I. INTRODUCTION

On June 18, 2007, The Utility Reform Network (“TURN”) filed an application for rehearing of Decision (D.) 07-05-043 (“Decision”). D.07-05-043 awards TURN \$47,630.83 of the \$81,495.81 it requested for its work contributing to the resolution of issues in D.06-11-048 in this proceeding. In its application for rehearing, TURN specifically challenges the Decision’s denial of TURN’s request for compensation for the travel time and expenses of its consultant, Marcus.

We have carefully considered all the arguments presented by TURN and are of the opinion that legal error has not been shown. However, we are persuaded that it is reasonable to award compensation for Marcus’ travel time and expenses in this limited instance. Accordingly, we will modify the Decision to grant the additional compensation, and deny rehearing of the Decision, as modified.

II. DISCUSSION

TURN has two main arguments in support of its claim that the Decision errs in denying TURN’s travel expense request¹. First, TURN argues that that the denial of the request alters a longstanding Commission rule requiring that travel time be

¹ References to “travel expenses” and “travel compensation” include the cost and compensation for travel time as well as incidental travel expenses such as mileage, parking, and fares.

compensated at one-half the professional's normal rate. According to TURN, the Commission's deviation from this rule without notice and an opportunity to be heard is legal error pursuant to Public Utilities Code section 1708.² TURN also argues that the new policy is discriminatory, unfair, and inadequately supported in the Decision. TURN's position that the Commission was legally required to compensate it for travel expenses is mistaken.

A. Section 1708

Intervenor compensation at the Commission is primarily governed by section 1801 et seq. ("Intervenor Compensation Statute"). Pursuant to the Intervenor Compensation Statute, "compensation" for intervenors includes "payment for all or part, as determined by the Commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding..." (§ 1802 (a).)

As TURN notes, the Commission discussed compensation for travel time in *Re Intervenor Compensation Program* [D.98-04-059] (1998) 79 Cal.P.U.C.2d 628, 1998 Cal. PUC LEXIS 429. In that decision the Commission concluded:

We have previously determined that travel time is compensable at one-half the normal hourly rate approved, unless the customer provides a detailed showing that the time was used to work on issues for which we grant compensation. We will continue that practice.

(*Id.* Conclusion of Law 26.)

TURN points out that we have routinely approved travel time compensation awards and have rarely scrutinized them for reasonableness. However, in addition to the case in question, the Commission recently denied compensation for requested travel time and travel expenses in *Demand Response Programs Compensation*, D.07-04-010. As the Commission explained:

² All section references are to the Public Utilities Code unless otherwise specified.

An intervenor's fees are assumed to cover such overhead costs [routine commuting], just as they cover administrative costs. If an intervenor has extraordinary travel costs, that are reasonable and justified... we will continue to compensate them.

(*Id.* at p. 12.)

According to TURN, pursuant to D.98-04-059, as followed in subsequent Commission decisions, there is a "rule" or "policy" requiring that all requested travel time be compensated at one half the professional's rate without review. TURN's position is mistaken, and not supported by the language of D.98-04-059. All we considered in D.98-04-059 is the *rate* at which travel time is compensable - half the normal hourly rate. That decision did not specify under what conditions travel time would be compensated, or what types of travel expenses would be reasonable. Moreover, it is not realistic for TURN to believe that we would guarantee compensation for all travel expenses, regardless of whether those expenses are reasonable. Indeed, this result would be contrary to the intervenor statute, which provides for compensation for *reasonable* costs of participation. (See § 1802 (a).)

In addition, contrary to TURN's suggestion, our previous grants of compensation for travel expenses do not constitute a rule, or precedent that must be followed. The fact that generally we have not examined these requests closely does not in any way indicate that travel expenses must be granted automatically. TURN has not pointed to any holding stating that travel must be automatically compensated, and, as explained above, such a holding would be inconsistent with the statute. There is no question that we have the authority to review travel compensation requests carefully, whether or not we have routinely done so in the past.

In light of the above, there was no rule or order requiring that all intervenor travel expense requests be granted. For this reason, our denial of TURN's request for compensation for Marcus' travel time and expenses did not violate section 1708, or contradict earlier holdings.

B. Travel Compensation Standards

In addition to arguing that we altered our earlier holdings, TURN also contends that we lacked a sufficient basis to deny TURN's specific request for compensation for Marcus' travel. Although TURN is mistaken in claiming it was error to deny its request, sufficient cause exists to exercise our discretion to grant TURN's request in this instance.

TURN maintains that it is unfair to deny Marcus' travel costs because state employees and utilities are compensated for their travel time and costs. This argument fails because neither state employees nor utilities are similarly situated to intervenors for the purposes of travel compensation, and, in any event, Commission does not control the travel reimbursement for either group. Furthermore, TURN's assertions are inaccurate. State employees are generally salaried, and their hourly rate, which does not include overhead, would naturally be less than intervenors with comparable experience receive. Moreover, they often have no clear compensation for travel time, beyond a small per diem for expenses. TURN presents no information on utility travel reimbursement, but argues that the utilities receive travel compensation through rates. This form of compensation is consistent with compensating intervenors for travel through hourly professional rates that include overhead such as travel. For these reasons, TURN's assertion that denying specific compensation for travel time and expenses is unjust is not convincing.

Although TURN is mistaken in its view that its travel time and expense requests cannot be scrutinized or denied, there are instances when specific compensation for these travel costs is appropriate. It is the intervenor who has the burden, however, as the requesting party and the party with access to the relevant information, of demonstrating the reasonableness of its travel expenses, and whether these costs go beyond those compensated in hourly rates. Intervenors cannot assume that the reasonableness of these expenses will be presumed. Furthermore, although we aim to be consistent, because the Intervenor Compensation Statute requires that we use our judgment in determining appropriate expenses, our decisions concerning travel

compensation will not necessarily be uniform. (See *Order Denying Rehearing re Diablo Canyon Plant Steam Generator Replacement Intervenor Compensation* [D.07-02-035] 2007 Cal.PUC LEXIS 79, at * 10.) TURN should be aware that a determination regarding one compensation request is not binding on subsequent intervenor compensation requests.

Whether an individual travel expense should be separately compensated will depend on a number of factors regarding the reasonableness of the expense. These factors include: (1) the size of the of travel time/expense award; (2) the amount of travel time/expenses compared to the total award for participation; (3) whether the travel is routine and fairly considered to be compensated by the other hourly compensation provided; (4) whether the travel expenses were reasonably incurred; and (5) whether there were less expensive means to participate in the Commission's proceeding. Of course, this list is not exhaustive, and other factors may come into play in individual cases.

Specifically concerning the request for Marcus' travel time and expenses, we note that it was reasonable for the Decision to conclude that his travel in this case - a trip from Sacramento to San Francisco and back - was routine and therefore fairly subsumed within the hourly compensation TURN received. However, at the same time, the amount requested was not large, and the purpose of the travel was to attend a Commission hearing on a single occasion. Moreover, TURN appears to have been unclear that its travel expense requests were subject to scrutiny. Therefore, we will modify the Decision to grant compensation for Marcus' travel time and expenses in this limited instance. Future compensation decisions will need to determine what travel expenses are to be separately compensated in the context of the specific compensation request considered.

III. CONCLUSION

For the above reasons, we will modify the Decision to grant TURN compensation for Marcus' travel time and expenses. We will deny rehearing of the Decision, as modified.

Therefore IT IS ORDERED that:

1. The paragraph on page 15 of D.07-05-043 beginning with, “We also deny...” is deleted.
2. TURN is hereby awarded an additional \$440.00, the amount it requests for Marcus’ travel time and expenses.
3. The table on pages 17-18 of D.07-05-043 is modified to include three hours of travel time compensation for Marcus, and \$112 in travel expense compensation.
4. The Appendix to D.07-05-043 is modified to change the amount awarded to \$48,070.83.
5. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay TURN the additional \$440.00 award herein. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 18, 2007, the 75th day after the filing date of TURN’s request for compensation, and continuing until full payment is made.
6. Rehearing of D.07-05-043, as modified herein, is denied.
7. This proceeding is closed.

This order is effective today.

Dated October 4, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners