

MAR 13 1991

Decision 91-03-009 March 13, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SCEcorp and its public utility)	
subsidiary SOUTHERN CALIFORNIA EDISON)	
COMPANY (U 338-E) and SAN DIEGO GAS &)	Application 88-12-035
ELECTRIC COMPANY (U 902-M) for)	(Filed December 16, 1988;
Authority to Merge SAN DIEGO GAS &)	amended April 17, 1989)
ELECTRIC COMPANY into SOUTHERN)	
CALIFORNIA EDISON COMPANY.)	

OPINION ON UTILITY CONSUMERS' ACTION NETWORK REQUEST FOR FINDING OF ELIGIBILITY FOR COMPENSATION

On July 31, 1990, Utility Consumers' Action Network ("UCAN"), filed a Request For Finding of Eligibility For Compensation under Article 18.7 (Rules 76.51 through 76.62) of the Commission's Rules of Practice and Procedure. No party opposes UCAN's filing. Article 18.7 specifies the requirements to be met by intervenors who seek compensation "for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs...of participation or intervention in any proceeding of the Commission initiated on or after January 1, 1985, to modify a rate or establish a fact or rule that may influence a rate." (Rule 76.51.) Since the Southern California Edison Company (Edison)/San Diego Gas & Electric Company (SDG&E) merger application, filed December 16, 1988, raises ratepayer net benefits and ratemaking issues, it is a proceeding which will "modify a rate or establish a fact or rule that may influence a rate." Therefore UCAN's Request For Finding Of Eligibility is appropriately considered under the provisions of Article 18.7.

Timeliness of UCAN's Request

Rule 76.54(a) requires that Requests For Eligibility be filed within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. UCAN's filing

was made before closure of the evidentiary record, and complies with Rule 76.54(a). Therefore, UCAN's request is timely.

Other Requisites of Rule 76.54

Rule 76.54 requires that a Request For Eligibility include four items:

- "(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds. If the customer has met its burden of showing financial hardship in the same calendar year, as determined by the Commission under Rule 76.05, 76.25, or 76.55, the customer shall make reference to that decision by number to satisfy this requirement;
- "(2) A statement of issues that the customer intends to raise in the hearing or proceeding;
- "(3) An estimate of the compensation that will be sought;
- "(4) A budget for the customer's presentation.

We now analyze UCAN's showing, in compliance with these four requisites.

1. Significant Financial Hardship

Article 18.7 contains a two-pronged test to determine whether a party would, absent a finding of eligibility for compensation, face significant financial hardship:

- "(1) That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and,
- "(2) Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of

participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding." (Rule 76.52(f).)

UCAN submits that it satisfies both prongs of this standard, because its representation of 57,500 residential and small business ratepayers covers a specific interest not otherwise adequately represented in this proceeding.

In numerous past decisions this Commission has found that DRA's participation does not obviate the need for intervenor representation of residential or small business interests (D.85-06-028, mimeo. pp. 2-3). UCAN was actively involved in furthering the merger-related interests of residential and small business ratepayers in SDG&E's service territory, and thus satisfies the first part of the Rule 76.52(f) standard.

Since the economic interest of UCAN's members is small in comparison to the costs of the effective participation in this complex multi-party proceeding, it would be uneconomical for individual ratepayers to intervene and incur participation costs. While UCAN's participation may generate savings for all ratepayers, those savings, when scaled down to an individual basis, will not approach the overall costs of participation. Therefore, UCAN has satisfied the second part of the Rule 76.52(f) standard.

Pursuant to the requirements of Rule 76.54(1) UCAN has also attached, as Exhibit A to its filing, a summary of its finances, comprised of recent fiscal year budgets for 1988 and 1989. UCAN receives only a small percentage of its income from grants. It has received a joint grant from the Telecommunications Education Trust, beginning March 1, 1990, and its monthly income from the grant will not exceed \$1500.

The bulk of UCAN's income is derived from membership fees and contributions. Its revenues are occasionally supplemented by intervenor compensation awards. It receives money from no other source and limits its membership contributions to no more than \$150 annually, thus precluding large contributions from individuals or businesses.

While UCAN has provided no specific information to indicate whether any grant funds are committed to its efforts in this proceeding, it is clear that the bulk of UCAN's income is unrelated to grant funds. All things considered, we believe UCAN has made an adequate good faith effort to address the portion of Rule 76.54 which requires it to provide in connection with its significant financial hardship showing, a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds.

2. Statement of Issues

UCAN was active in many procedural and discovery-related issues in the early stages of this proceeding, and has submitted testimony and cross-examined witnesses on policy, rate design, revenue requirement and competition issues. Thus UCAN has satisfied Rule 76.54(a)(2) by detailing these issues in its eligibility filing.

We anticipate that these major issues will also be thoroughly reviewed and addressed by DRA and several other parties. This may necessitate an analysis of duplication issues when we review UCAN's compensation request at a later stage in this proceeding.

3. UCAN's Estimate of the Compensation That Will Be Sought

Rule 76.54(a)(3) requires an estimate of the compensation that will be sought. UCAN believes it is premature to establish the amount of compensation it will seek, since this lengthy

proceeding is on going. However, UCAN asserts that its compensation request could exceed \$100,000.

Budget Rule 76.54(a)(4) requires a budget for UCAN's presentation. UCAN's budget is identical to its estimate of compensation: \$100,000. This figure is necessarily preliminary and its reasonableness will be reviewed in the compensation stage of this proceeding.

Conclusion

For purposes of this proceeding we have determined that UCAN has met its burden of showing significant financial hardship because it has satisfied the two-pronged significant financial hardship test set forth in Rule 76.52(f). This determination will carry over to UCAN's participation in other proceedings for calendar year 1991 (Rule 76.54(a)(1)).

For purposes of the merger proceeding only, we have also determined that UCAN has adequately addressed the other three requirements of Rule 76.54 (statement of issues, budget, and compensation estimate). Therefore, UCAN is eligible for an award of compensation in this proceeding.

Findings of Fact

1. UCAN's request for eligibility was timely filed and addressed all four elements specified in Rule 76.54(a), Article 18.7 of the Commission's Rules of Practice and Procedure, governing Intervenor Fees, and Expenses.

2. UCAN represents the interests of residential and small business ratepayers not otherwise adequately represented, and who, as individuals, have a small economic interest in comparison to the costs of effective individual participation; therefore UCAN has demonstrated significant financial hardship under Rule 76.52(f).

Conclusions of Law

1. UCAN should be found eligible to claim compensation under Article 18.7 of our rules for its participation in this proceeding.
2. The determination that UCAN has met its burden of showing significant financial hardship in this proceeding should carry over to other proceedings in which UCAN participates in calendar year 1991.

ORDER

- IT IS ORDERED** that:
1. Utility Consumers Action Network (UCAN) is eligible to claim compensation for its participation in this proceeding.
 2. The determination that UCAN has met its burden of showing significant financial hardship in this proceeding shall carry over to other proceedings in which UCAN participates in calendar year 1991.

This order is effective today.

Dated March 13, 1991, at San Francisco, California.

PATRICIA M. ECKERT
 President
 G. MITCHELL WILK
 JOHN B. OHANIAN
 DANIEL WM. FESSLER
 NORMAN D. SHUMWAY
 Commissioners

I CERTIFY THAT THIS DECISION
 WAS APPROVED BY THE ABOVE
 COMMISSIONERS TODAY

Neal J. Shuman
 NEAL J. SHUMAN, Executive Director