

DEC 18 1991

Decision 91-12-045 December 18, 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 & )  
 ELECTRIC COMPANY (U 902-M) for )  
 Authority to Merge SAN DIEGO GAS & )  
 ELECTRIC COMPANY into SOUTHERN )  
 CALIFORNIA EDISON COMPANY. )

ORIGINAL

Application 88-12-035  
 (Filed December 16, 1988;  
 amended April 17, 1989)

**OPINION DECIDING UCAN'S AND RATE WATCHERS' REQUESTS  
 FOR COMPENSATION AND CLOSING PROCEEDING**

**Summary**

Utility Consumers' Action Network (UCAN) requests compensation of \$243,794.31 for its contribution to Decision (D.) 91-05-028, in which we declined to authorize a proposed merger between Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E). We find that UCAN made a substantial contribution to this decision, and we award compensation of \$123,236.93.

Rate Watchers requests compensation of \$10,815.87 for its contribution to D.91-05-028. We conclude that Rate Watchers did not make a substantial contribution to the decision, and therefore we deny Rate Watchers' request.

**I. UCAN's Request**

**A. Introduction**

On March 13, 1991, in D.91-03-009, we found UCAN eligible for compensation for its substantial contributions to decisions in this proceeding. UCAN filed its request for compensation for its

contribution to D.91-05-028 on June 6, 1991. Edison filed its response to UCAN's request on July 5, and UCAN replied to Edison's response on July 8.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

"Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

Rule 76.52(h) defines "final order or decision" to mean "an order or decision that resolves the issue(s) for which compensation is sought." Although D.91-05-028 was not designated as a final opinion, it resolved the issues for which UCAN seeks compensation.

D.91-05-028 was decided on May 8, 1991. UCAN's filing of June 6 meets the time limits and other requirements of Rule 76.56.

**B. Substantial Contribution**

Rule 76.58 requires the Commission not only to determine whether UCAN made a substantial contribution to D.88-07-058, but also to describe that substantial contribution and to set the amount of the compensation to be awarded. According to Rule 76.52(g), an intervenor has made a "substantial contribution" when:

"...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 had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

UCAN asserts that it made a substantial contribution to D.91-05-028 in three general areas corresponding to the required

findings stated in Public Utilities Code § 854: the net long- and short-term benefits of the merger (§ 854(b)(1)), effects of the merger on competition (§ 854(b)(2)), and effects of the proposed merger on the public interest (§ 854(c)). UCAN also seeks compensation for the general and preparatory work it performed in connection with its substantial contributions and for the time devoted to briefs, comments, and the en banc oral argument of March 20, 1991.

UCAN acknowledges that D.91-05-038 "does not expressly reflect UCAN's substantial contributions to the proceeding" and that "the effect of [UCAN's] work upon the final Commission decision is all but impossible to objectively document." Thus, it is difficult to show that the Commission adopted UCAN's factual or legal contentions or its policy or procedural recommendations, as required by Rule 76.52(g). In similar circumstances, the Commission has adopted an alternate measure of an intervenor's substantial contribution:

"[I]n certain exceptional circumstances,... the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include: (1) an extraordinarily complex proceeding, requiring technical or legal skills not demanded by the majority of Commission proceedings, such that the cost of participation by counsel or the presentation of expert testimony in such a case is significantly greater than the norm, and (2) a case of unusual importance, either as a precedent for a significant ratemaking policy change or because of the extraordinary financial impact of the case on rates or on the fiscal health of the utility." (D.89-03-063, as modified by D.89-09-103, rev'd pp. 3-4.)

UCAN argues that the two factors listed in this passage are present in this case. UCAN urges the Commission to apply this alternate standard of substantial compensation, when appropriate, in evaluating its request.

We agree that this case meets the two criteria mentioned in the quoted passage. We will apply the alternate measure of substantial contribution to UCAN's request when appropriate.

1. Net Long- and Short-Term Benefits

Section 854(b)(1) requires proponents to show that a merger has net benefits in the long and short term and to provide a ratemaking mechanism that passes on these benefits to ratepayers. UCAN requests compensation for its contributions on the issues of labor savings claimed for the merger and proposed ratemaking mechanisms.

Edison maintains that UCAN merely duplicated the considerable efforts of DRA on this issue, and UCAN should receive no compensation for the time spent on this issue.

In the area of labor savings, UCAN presented testimony to support its contention that calculations presented by Edison and SDG&E (applicants) did not take into account SDG&E's administrative efficiencies and productivity improvements. UCAN also used the recent reorganization of SDG&E's Customer Service Department to illustrate the kind of efficiencies that SDG&E could achieve as an independent company.

The discussion of labor savings in D.91-05-028, however, is based on other issues not raised by UCAN. We conclude that UCAN did not make a substantial contribution on this issue.

On the ratemaking issues, UCAN argued that applicants' proposal would not ensure that ratepayers would receive the long-term benefits of the merger, as required by § 845(b)(1). UCAN notes that its interpretation of this paragraph, as set forth in its opening brief, is nearly identical in substance to the interpretation of D.91-05-028. The decision concluded, without

reference to UCAN, that § 854 required the applicants to "make sure" that forecasted savings are achieved. UCAN's argument is congruent with the Commission's reasoning.

UCAN also cross-examined one of applicants' witnesses to expose the structural limitations of relying on the Energy Cost Adjustment Clause (ECAC) mechanism to pass through expected savings to ratepayers. D.91-05-028 noted the limitations of applicants' proposals.

We conclude that UCAN made a substantial contribution on ratemaking issues.

UCAN did not allocate the claimed hours between the two issues it addressed in this area. Under these circumstances, it is appropriate to allow compensation for only one-half of UCAN's claimed 119.2 hours, or 59.6 hours.

## 2. Competition

UCAN opposed the merger on the grounds that the merger was against the Commission's policy of encouraging competition and that the merger would cause a loss of "across-the-fence" rivalry that could not be mitigated. D.91-05-028 referred to the presentation of UCAN, among other parties, in reaching the conclusion that the merger would eliminate across-the-fence rivalry (pp. 110-111). (UCAN acknowledges that the Commission classified this as an effect on the public interest, rather than on competition.) UCAN's development of the record to document the Commission's decade-long effort to promote competition in the electric utility industry was not specifically cited in the decision, but UCAN believes Commissioner Wilk's concurring opinion (p. 2) alluded to UCAN's position. UCAN requests compensation for 111.3 hours for its efforts on these issues.

Edison does not contest UCAN's claim for compensation on these issues.

We agree that UCAN made a substantial contribution to D.91-05-028 on the issue of across-the-fence rivalry. Both

D.91-05-028 (pp. 110-111) and the proposed decision of the Administrative Law Judges (ALJs) relied on the record established by UCAN in resolving this issue. Although it was not necessary in the decision to state again our policies favoring competition, UCAN contributed to our decision by pointing out that certain aspects of the merger conflicted with our policies. See UCAN's Opening Brief, pp. 33-36.

We will compensate UCAN for the 111.3 hours it spent on competition issues.

### 3. Public Interest

UCAN addressed two distinct aspects of the merger's effect on the public interest: the criteria specified for the Commission's consideration in § 854(c) and the question whether the cities with franchise agreements with SDG&E have jurisdiction over the merger.

#### a. The Criteria of Section 854(c)

Section 854(c) sets forth seven criteria for the Commission to consider in determining whether a proposed merger is, on balance, in the public interest. UCAN's presentation focused on three of these criteria: the effect of the merger on the quality of service (§ 854(c)(2)), the effect of the merger on local economies and the affected communities (§ 845(c)(6)), and the preservation of the Commission's jurisdiction and its ability to regulate (§ 854(c)(7)).

UCAN contended that the Commission's ability to regulate would be impaired by the loss of yardstick comparisons between Edison and SDG&E. UCAN also argued that the size and scope of the merged company's operations would increase the potential for improper dealings with the merged company's unregulated affiliates.

Edison points out that D.91-05-028 stated that UCAN repeated the arguments of other parties on the effects of the merger on the Commission's ability to regulate. The decision also mentions the positions of several intervenors other than UCAN in

its discussion of the merger's effects on local communities. Even UCAN acknowledges that the Commission did not address UCAN's analyses of the comparative rates of Edison and SDG&E. Because of this lack of contribution and duplication of effort, Edison believes that UCAN should be compensated for no more than two-thirds of its time in this area.

D.91-05-028 concluded that "loss of SDG&E as a regulatory comparison is an adverse unmitigable impact of the proposed merger" (p. 123) and credited this argument to UCAN, among other parties. The decision's discussions of the effects of the increased potential for improper affiliate transactions (pp. 79-80, 91-97) mention UCAN only in passing and make clear that other parties were primarily responsible for developing this point.

UCAN argued that the merger would harm local communities and that applicants' proposed commitments were insufficient to offset these harms. D.91-05-028 recited UCAN's position on this issue (p. 119, fn. 75), but determined on other grounds that applicants had failed to show that the merger would be beneficial to state and local economies and the affected communities. UCAN also sponsored rate comparisons to show the merger's potential effect on SDG&E's customers. UCAN acknowledges that these comparisons were not expressly addressed in D.91-05-028.

UCAN's request does not specifically address its claimed contribution on the merger's effect on the quality of service. As we have mentioned, D.91-05-028 considered across-the-fence rivalry as an aspect of the merger's effect on quality of service, and UCAN's contribution to the decision on across-the-fence rivalry has been previously discussed. In the remainder of this section, the decision makes only passing reference to UCAN's positions (p. 108, fn. 67).

We conclude that in the evaluation of the merger's effect on the public interest under the criteria of § 854(c), UCAN made a substantial contribution only on the issue of the

preservation of the Commission's jurisdiction and ability to regulate.

UCAN's request does not allocate the 143.6 hours devoted to the criteria of § 854(c) among the three issues it addressed. Because we have found that UCAN made a substantial contribution on only one of the three issues it addressed, it is appropriate to allow compensation for only one-third of the hours UCAN listed, or 47.7 hours.

**b. The Cities' Jurisdiction over the Merger**

UCAN also explored the question whether SDG&E's franchise contracts with various cities created a shared jurisdiction between the cities and the Commission. UCAN acknowledges that D.91-05-028 did not address this issue. Nevertheless, UCAN seeks compensation for its efforts under the alternate standard for compensation stated in D.89-03-063, as modified in D.89-09-103. UCAN believes that presenting this issue was essential to the Commission's informed consideration of the merger.

Edison says that the Commission made no decision on this issue to which UCAN could have contributed, and no compensation should be awarded.

In light of the absence of any discussion of this issue in D.91-05-028, we conclude that UCAN did not make a substantial contribution on this issue, and we will not award compensation for the 40.4 hours UCAN spent on this issue.

**c. General and Preparatory Work**

UCAN seeks compensation for all of its general and preparatory work for five reasons:

- "1. UCAN substantially contributed to most of the issues that it pursued.
- "2. The importance and scope of the case was such that the Commission benefited from UCAN's active involvement in the discovery and procedural aspects of the case.



- "3. The discovery process in this case was unusually complex, unwieldy and contentious. UCAN's work is reasonable in light of the complications of discovery in this particular case.
- "4. The compensation sought by UCAN for general preparation is reasonable in relation to the contribution it made to the process and the final decision.
- "5. The Commission wishes to send a message to intervenors to encourage their active participation in major policy cases such as this merger application."

UCAN divides its general and preparatory time into several categories: motions and responses; discovery and general testimony preparation; briefing, comments, and oral argument; preparation of the compensation request; and travel time.

Edison contends that UCAN's claim for compensation for general and preparatory work should be proportional to its contribution, since UCAN did not make a substantial contribution on all or most of the issues it raised.

In this case, UCAN's claim for full compensation for its general and preparatory work is undermined by its failure to make a substantial contribution on several of the issues it pursued in this proceeding. When a party is only partially successful in demonstrating that it has made a substantial contribution on the issues it pursued in a proceeding, we normally allocate preparation time in proportion to the degree of contribution. D.89-10-032, D.85-08-012. In our discussion of UCAN's substantial contribution to D.91-05-028, we decided to award compensation on the following basis:

<u>Issue</u>	<u>Request</u>	<u>Award</u>
Net Benefits	119.2 hours	59.6 hours
Competition	111.3 hours	111.3 hours
Public Interest	184.0 hours	47.7 hours
<b>TOTAL</b>	<b>414.5 hours</b>	<b>218.6 hours</b>

Thus, we determined that UCAN's substantial contribution to D.91-05-028 accounted for about 53% of the hours UCAN claimed. Under our usual approach, we would award UCAN compensation for 53% of the time devoted to general and preparatory work.

1. Motions and Responses

UCAN filed 24 comments or responses in this case, but it seeks compensation for only the 15 filings that were cited in a ruling or were essential to UCAN's active participation in this case.

In reviewing UCAN's request in detail, we find that UCAN's filings fall into three categories: filings that assisted the Commission or the ALJs in arriving at a ruling or a decision; filings that either did not assist the Commission or the ALJs or that materially duplicated the filings of other parties; and filings that were essential to UCAN's participation in this case.

We conclude that the filings that assisted the Commission or the ALJs were approximately equal to the filings that did not assist the Commission or the ALJs or that materially duplicated other parties' filings. Although UCAN discussed its individual filings in detail, it did not separately account for the time devoted to each filing. Under these circumstances, it is fair and appropriate to compensate UCAN for the time spent on motions and responses in proportion to its contribution on substantive issues.

UCAN also seeks compensation for its participation in prehearing conferences, the time it spent in meetings with Edison or SDG&E, and the time spent communicating with other intervenors on procedural matters.

Edison objects to the portion of the request relating to time UCAN spent assisting the City of San Diego and the Southern Cities. Public entities like these are explicitly excluded from eligibility for compensation (Public Utilities Code § 1802(g)), and allowing an eligible intervenor to receive compensation from

ratepayers for work performed to assist ineligible intervenors circumvents the statute.

We agree that UCAN should not be compensated for work performed to assist intervenors not eligible for compensation. On the other hand, cooperation among intervenors to prevent duplication of effort is to be encouraged. We will allow compensation for hours spent preparing for and attending prehearing and scheduling conferences and similar procedural activities. Since UCAN did not clearly describe the nature of its communications with other intervenors in its time records, we will not compensate UCAN for the small amount of time (6.6 hours) it spent in conversations with other intervenors that is not otherwise justified. We will allow a proportional recovery for the hours UCAN properly spent on procedural matters.

We will compensate UCAN for 53% of the remaining 188.8 hours devoted to motions, responses, and related activities, or 100.1 hours. (UCAN's requested hours were also reduced by 2.3 hours spent on preparation of its request for eligibility. UCAN claimed these hours twice, and they are considered elsewhere in this decision.)

## 2. Discovery and Review of Testimony

As part of its general preparatory work, UCAN seeks compensation for the time devoted to discovery and to reviewing other parties' testimony. Because of the large number of active parties, the voluminous response to discovery, and the parallel proceeding before the Federal Energy Regulatory Commission (FERC), UCAN states that the time required for effective discovery was considerable.

UCAN requests compensation for only the time spent by the attorney who reviewed the testimony and conducted discovery. The request excludes time spent by UCAN's staff and volunteers in organizing documents. UCAN requests compensation for 585.4 hours.

UCAN's discovery and review work was essential to its participation in this proceeding. We will compensate UCAN for 53% of the 585.4 hours spent on discovery and review of testimony, or 310.3 hours.

3. Briefing, Comments, and Oral Argument

UCAN requests compensation for the time devoted to preparation of the opening and reply briefs, motions and comments related to the Attorney General's supplemental brief, and comments on the ALJs' Proposed Decision. UCAN also seeks compensation for its participation in the oral argument before the Commission sitting en banc on March 20, 1991, and for its comments on the legislative history of Senate Bill 52.

We will compensate UCAN for these items in proportion to its contribution on the substantive issues. This approach results in compensation for 142.5 hours of the 268.9 hours devoted to these activities.

4. Preparation of Eligibility and Compensation Request

UCAN seeks compensation for 47.2 hours spent preparing its requests for eligibility and compensation. UCAN reduced its hours devoted to preparation of its requests by 30% to reflect that UCAN's attorney prepared the requests without secretarial or clerical assistance. Even with the reduced hours, UCAN's request appears to include time devoted to tasks that do not require the training or experience of an attorney; yet UCAN seeks compensation for this time at an hourly rate that UCAN justifies by reciting its attorney's experience and expertise. Thus, a further reduction of UCAN's hours is appropriate. We will award compensation for 25 hours for the preparation of the requests for eligibility and compensation.

5. Travel Time

UCAN includes productive travel time--the travel time spent actively preparing for hearings or reviewing materials--in

its issue-by-issue time summaries, which we have already addressed. Because it "believes that the Commission traditionally awards 50% compensation for non-productive time," UCAN also requests compensation for 16 hours of its unproductive travel time connected with this proceeding.

We discussed the issue of compensation for travel time in D.86-09-046. We determined that travel time that could potentially be used doing productive work "is compensable only if a detailed showing is provided by applicant to demonstrate that the time was reasonable and that it was used to work on issues for which compensation is ultimately granted by the Commission. Compensation may be granted for these hours, upon a proper showing, at a rate of up to 100% of the claimed hours, in a manner consistent with our general rules for intervenor fee awards." Travel time that cannot be used productively "is compensable at a maximum of one-half the normal hourly rate approved, upon a showing that the time claimed was reasonable and that this time could not have been used to work on any issues in the case."

UCAN included productive travel time in the time recorded for its work on substantive issues, and we have already adjusted those hours to reflect UCAN's substantial contribution. A similar adjustment should be made to the unproductive travel time before we reduce the hourly rate according to the policies articulated in D.86-09-046. Thus, UCAN should be compensated at a reduced rate for 53% of its 32 hours of unproductive travel time, or 17.0 hours, at one-half of the hourly rate authorized for its attorney.

#### D. Costs

##### 1. Expert Witness Fees

UCAN seeks recovery of \$8,654 of expert witness fees it incurred in this proceeding. The experts' services include the prepared testimony of William Marcus (Exh. 53,425), and the experts' work focused on the issues of the public interest and net benefits.

The hourly fees charged by UCAN's experts do not exceed the rates that were found reasonable in D.90-08-021. The experts' invoices, however, do not contain a detailed description of the work performed; the statements are for "services rendered" and expenses. UCAN states that \$3,205.57 of the fees were for Marcus' prepared testimony, and the remaining fees were for services related to discovery, issue identification, and procedural issues. Marcus's testimony has six major points in two areas. Four points criticize the calculation of the net benefits of the merger performed by applicants and DRA, and two points cover calculations of the effect of the merger on rates for residences and small businesses. As we have discussed, UCAN did not make a contribution on the first area but it did contribute to our decision in the second area. Under these circumstances, it is reasonable for UCAN to receive compensation for its expert witnesses' fees in proportion to its substantial contribution. See D.89-10-032. This approach results in compensation of \$4,586.62.

## 2. Other Costs

UCAN incurred \$4,699.91 in postage and copying costs for its major filings in this proceeding. Costs for more routine filings were included in UCAN's attorney's fees. UCAN also incurred \$1,000.40 in travel costs.

These costs are reasonable and are less than 25% of the total fees awarded (Rule 76.52(c)). We will compensate UCAN for these costs.

## E. Hourly Rate

UCAN requests an hourly rate of \$150 for the time of its attorney, Michael Shames. UCAN notes that the requested hourly fee is roughly the average of the appropriate fees for the two years when the bulk of the work in this case was done: \$140 for 1989 and \$160 for 1990. UCAN argues that these fees are in line with the market rates for an attorney of Shames' experience.

Edison points out that D.91-06-010 found an hourly rate of \$135 to be "reasonable for work performed [by Shames] in 1990 and 1991." D.90-09-073 also approved a rate of \$135 for Shames' services. UCAN has suggested no reason why a higher rate should be paid for work performed in 1989 and 1990, according to Edison.

In finding an hourly rate of \$135 to be reasonable for work performed by Shames in 1990 and 1991, we merely granted the rate UCAN requested. In this proceeding, UCAN requests a higher hourly rate, and our previous acceptance of UCAN's requested rate should not necessarily determine the appropriate rate. In light of the period covered by this proceeding and the complexity of the issues presented, we conclude that an average hourly rate of \$140 is reasonable for Shames' time.

#### F. Allocation

UCAN did not address the question of how to allocate its compensation between the two utilities that proposed to merge. The record in this case shows that, measured by characteristics such as number of customers, total sales, peak demand, and revenue requirements, Edison is roughly 4 to 5 times larger than SDG&E (Exhs. 7, 9). We will allocate 80% of the responsibility for UCAN's compensation to Edison and 20% to SDG&E.

#### G. Conclusion on UCAN's Request

UCAN is entitled to compensation of \$123,236.93, as summarized in the following table:

Item	Request	Award	Total
<b>Attorney's Time</b>			
Net Benefits	119.2 hrs.	59.6 hrs.	\$ 8,344
Competition	111.3	111.3	15,582
Public Interest	184.0	47.7	6,678
Motions	197.7	100.1	14,014
Discovery	585.4	310.3	43,442
Briefing	268.9	142.5	19,950
Compensation	47.2	25.0	3,750
Travel	32.0	17.0 @ \$70	1,190
<b>Subtotal</b>			<b>\$112,950</b>
<b>Costs</b>			
Experts	\$8,654.00	\$4,586.62	
Copying, Postage	4,699.91	4,699.91	
Travel	1,000.40	1,000.40	
<b>Subtotal</b>			<b>\$10,286.93</b>
<b>Total Award</b>			<b>\$123,236.93</b>

Edison shall pay 80% of this total (\$98,589.54), and SDG&E shall pay 20% (\$24,647.39).

As discussed in previous Commission decisions, this order will provide for interest at the three-month commercial paper rate commencing on August 21, 1991 (the 76th day after UCAN filed its request) and continuing until full payment of the award is made.

UCAN is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants and any other costs for which compensation may be claimed.



## II. Rate Watchers' Request

On March 13, 1991, in D.91-03-008, we found Rate Watchers eligible for compensation for its substantial contributions to decisions in this proceeding. Rate Watchers filed its request for compensation for its contribution to D.91-05-028 on October 18, 1991. No party responded to Rate Watchers' request.

Rate Watchers filed its request for compensation well beyond the 30-day limit prescribed in Rule 76.56. A motion to accept its request as timely filed accompanied Rate Watchers' request. The motion states that Don Klein, Rate Watchers' Director of Regulatory Affairs, had a flare-up of rheumatoid arthritis that left him unable to gather information and prepare Rate Watchers' request until recently.

Although the Commission will permit deviations from its rules for good cause (Rule 87), the time limits of Rule 76.56 are taken directly from Public Utilities Code § 1804(c), and the code contains no provision to allow waiver or tolling of the 30-day limit. Despite the lack of express legislative authorization, in this instance we feel justified in invoking the broad powers granted us in § 701, to do all things necessary and convenient in the exercise of our jurisdiction to supervise and regulate public utilities. Under the specific circumstances stated in Rate Watchers' motion, we will use our authority under § 701 to toll the 30-day limit of Rule 76.56 during the period of Klein's physical inability to complete the required filing. Based on Rate Watchers' verified representations of Klein's condition, we grant Rate Watchers' motion and deem the request for compensation to be timely filed.

Rate Watchers asserts that it made a substantial contribution to D.91-05-028 in three areas.

Rate Watchers first contends that before the amendments to § 854 were enacted, Rate Watchers stated that it would seek to

see that the public interest was served. Later amendments to § 854 made it explicit that the Commission must consider the public interest in arriving at its decision on the proposed merger.

Second, Rate Watchers believes it developed evidence that transmission constraints facing SDG&E made it impossible for SDG&E to import 1,000 megawatts (MW) of power needed to meet its customers' projected demands through the year 2000, as contemplated in the plans for the merged utility. Rate Watchers concluded that SDG&E would be forced either to build new generating facilities to meet demand or to upgrade existing generating plants.

Third, Rate Watchers asserts that it developed the record on the transmission limitations of the merged system, which would permit the merged utility to control transmission access to the Pacific Northwest and the Southwest, to the detriment of municipal utilities within the merged utility's service area.

Rate Watchers also asserts that it assisted the Commission in setting up public participation hearings in the San Diego area, in establishing the schedule of the hearings, and in defining the issues to be addressed in evidentiary hearings.

After reviewing Rate Watchers' request and supporting documents in the record, we are unable to conclude that Rate Watchers' presentation "substantially assisted the Commission in the making of its order or decision" (Rule 76.52(g)). Rate Watchers has failed to show that D.91-05-028 adopted in whole or in part one or more of Rate Watchers' factual contentions, legal contentions, or specific policy or procedural recommendations. (See Rule 76.52(g).) The sole reference to Rate Watchers in D.91-05-028 merely acknowledges Rate Watchers' active participation in this proceeding (p. 5, fn. 6). Rate Watchers has failed to demonstrate a connection between the findings, conclusions, discussions, and order of D.91-05-028 and the evidence or arguments presented by Rate Watchers. Thus, we conclude that Rate Watchers did not make a substantial contribution to D.91-05-028, and because

Rate Watchers has not met the requirement of Rule 76.53(a), no compensation should be awarded.

Our conclusion that Rate Watchers did not make a substantial contribution to D.91-05-028 makes it unnecessary to address the other elements of Rate Watchers' request.

### III. Closing of Proceeding

With the resolution of UCAN's and Rate Watchers' requests for compensation, nothing remains to be done in this proceeding. We will therefore close Application (A.) 88-12-035.

#### Findings of Fact

1. UCAN requested compensation totaling \$243,794.31 for its contribution to D.91-05-028. Rate Watchers requested compensation totaling \$10,815.87 for its contribution to D.91-05-028.

2. UCAN was found eligible to receive compensation in D.91-03-009. Rate Watchers was found eligible to receive compensation in D.91-03-008.

3. UCAN made a significant contribution to D.91-05-028 on issues concerning ratemaking, across-the-fence rivalry, the Commission's policies on competition, and the preservation of the Commission's jurisdiction and its ability to regulate.

4. UCAN did not make a significant contribution to D.91-05-028 on the other issues for which it sought compensation.

5. A reasonable way to adjust UCAN's time spent on general and preparatory work and expert witness fees is to develop a ratio of the hours found to support UCAN's actual substantial contribution to the hours UCAN's attorney recorded for issues on which UCAN claimed to have made a substantial contribution.

6. Of the 414.5 hours UCAN devoted to the substantive issues in this case, 218.6 hours, or about 53%, were spent on issues on which we found UCAN made a substantial contribution to D.91-05-028.

7. UCAN should not be compensated for time spent assisting entities excluded from eligibility for compensation. Based on UCAN's records, this time may be reasonably estimated to be 6.6 hours.

8. UCAN should be compensated for 25 hours for preparing its requests for eligibility and compensation.

9. The hourly fees charged by UCAN's experts do not exceed the rates that were found reasonable in D.90-08-021.

10. UCAN's costs are less than 25% of the total fees awarded to UCAN.

11. After adjustments are made for the lack of significant contribution on certain issues, duplication, time spent assisting entities excluded from eligibility for compensation, the time claimed for UCAN's participation in this proceeding is reasonable.

12. In light of the period covered by this proceeding and the complexity of the issues presented, an hourly rate of \$140 is reasonable for an attorney of Mr. Shames' training, experience, and expertise.

13. In terms of number of customers, total sales, peak demand, and revenue requirements, Edison is roughly 4 to 5 times larger than SDG&E.

14. Nothing remains to be done in A.88-12-035.

#### Conclusions of Law

1. UCAN made a substantial contribution to D.91-05-028.

2. Reasonable compensation for UCAN's contribution to D.91-05-028 is \$123,236.93.

3. Edison should be ordered to pay UCAN \$98,589.54, plus interest accrued from August 21, 1991.

4. SDG&E should be ordered to pay UCAN \$24,647.39, plus interest accrued from August 21, 1991.

5. Rate Watchers' motion to accept its request for compensation as timely filed is granted.

6. Rate Watchers did not make a substantial contribution to D.91-05-028.

7. A.88-12-035 should be closed.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall pay Utility Consumers' Action Network (UCAN) \$98,589.54 within 30 days as compensation for UCAN's substantial contribution to Decision (D.) 91-05-028. Edison shall also pay UCAN interest on this amount, calculated at the three-month commercial paper rate, beginning August 21, 1991, and continuing until full payment of the award is made.

2. San Diego Gas & Electric Company (SDG&E) shall pay UCAN \$24,647.39 within 30 days as compensation for UCAN's substantial contribution to D.91-05-028. SDG&E shall also pay UCAN interest on this amount, calculated at the three-month commercial paper rate, beginning August 21, 1991, and continuing until full payment of the award is made.

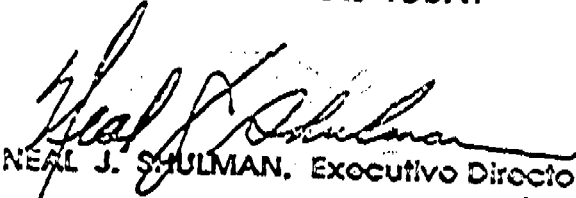
3. Application 88-12-035 is closed.

This order is effective today.

Dated December 18, 1991, at San Francisco, California.

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

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

  
NEAL J. SCHULMAN, Executive Director