

APR 22 1992

Decision 92-04-042 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Bell, a corporation, for)
authority to increase intrastate rates)
and charges applicable to telephone)
services furnished within the State)
of California.)

Application 85-01-034
(Filed January 22, 1985)

And Related Matters.)

I.85-03-078
OII 84
Case 86-11-028

OPINION DECIDING UCAN'S REQUEST
FOR COMPENSATION

Utility Consumers' Action Network (UCAN) requests compensation of \$21,824.84 for its contribution to Decision (D.) 92-01-023 and changes to telephone utility tariffs regarding telephone inside wire maintenance. We find that UCAN made a substantial contribution to the decision and to changes in utility tariffs. We award compensation to UCAN in the amount of \$20,732.84.

A. UCAN's Request

In D.92-01-023, we found UCAN eligible for compensation in this proceeding. UCAN filed this request for compensation for its contribution to D.92-01-023 on January 23, 1992. No party filed a response to UCAN's request.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation and requires that the compensation request include a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. UCAN's request includes the required information.

Rule 76.56 also requires that the compensation request be filed within 30 days of the issuance of the "final order or decision." 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.92-01-023 was not designated as a final opinion, it resolved the issues for which UCAN seeks compensation. D.92-01-023 was decided on January 13, 1992. UCAN's filing therefore meets the time limits and other requirements of Rule 76.56.

B. Substantial Contribution

Rule 76.58 requires the Commission to determine whether UCAN made a substantial contribution to D.92-01-023. 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 changes in policy regarding inside wire maintenance. UCAN states that most of its time was spent in settlement negotiations concerning inside wire maintenance charges and practices, and that most of these issues were resolved by advice letter filings which were adopted by the Commission. As a result of UCAN's intervention, UCAN states, Pacific Bell (Pacific) relieved its customers of a "maintenance of service" charge in cases where Pacific identifies an inside wire problem on the customer's premises. Pacific also modified the coverage of its Inside Wire Repair Plan under which customers pay a monthly fee. Finally, UCAN states the Commission adopted its recommendation in D.92-01-023 to undertake a study of inside wire policies and pricing.

As UCAN observes, we cannot know precisely the extent of its participation in settlement discussions or its role in motivating Pacific to change its inside wire pricing policies by way of advice letter. We do know, however, that UCAN was the first party to raise the issues for which it seeks compensation and that it negotiated a resolution of the issues with Pacific and other interested parties. As we have stated in other decisions, we do not wish to discourage parties from resolving disputes outside of the hearing room by declining to compensate them for participating in such alternative procedures. In this particular case, we encouraged the parties to settle their disputes. We find that UCAN made a substantial contribution to the resolution of issues in this proceeding for which it seeks compensation.

C. Reasonableness of Costs

1. Attorney Fees for Time Spent in Negotiations, Reviewing Documents and Drafting Pleadings

UCAN seeks \$19,614 in compensation for 140.1 hours of attorney time spent negotiating, reviewing documents and drafting pleadings. Attachment B of UCAN's request claims 7.8 hours for a meeting with San Diego Gas & Electric Company regarding demand-side management programs. We assume this inclusion was an oversight and that UCAN did not require the information from this meeting in order to advocate its position on inside wire maintenance issues. We will deduct 7.8 hours from UCAN's hourly total. The remaining 132.3 hours are reasonable.

2. Preparation of Eligibility and Compensation Request

UCAN seeks compensation for 6.8 hours spent preparing its requests for eligibility and compensation. This is a reasonable amount of time for preparing the two pleadings and we will grant UCAN's request for funding this preparation.

3. Travel Time

UCAN includes 16.5 hours of non-productive travel time, half of the hours its attorney actually spent traveling to settlement discussions.

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's request for half of its attorney's travel time is reasonable, and we will award compensation for the hours it requests.

4. Other Costs

UCAN incurred \$1,258.84 in travel, postage, telephone and copying costs for its participation in this proceeding. The costs include air travel costs for six trips to San Francisco to meet with settlement parties.

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.

D. Hourly Rate

UCAN requests an hourly rate of \$140 for the time of its attorney, Michael Shames. UCAN notes that the Commission recently granted Mr. Shames \$135 for 1990 and 1991 plus a \$5 per hour

premium to reflect the difficulty of the issues raised in the proceedings in which UCAN participated.

We found an hourly rate of \$135 to be reasonable for work performed by Mr. Shames in 1990 and 1991. In this proceeding, UCAN requests a slightly higher hourly 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 Mr. Shames' time.

B. Conclusion on UCAN's Request

UCAN is entitled to compensation of \$20,732.84. This amount is less than requested by UCAN because 7.8 hours of attorney time was claimed by UCAN in error, as discussed earlier.

Attorney's Time

139.1 hours @ \$140 per hour	= \$19,474.00
Copying, Postage, Telephone, Travel	= 1,258.84
Total Award	= \$20,732.84

As discussed in previous Commission decisions, this order will provide for interest at the three-month commercial paper rate commencing on April 8, 1992 (the 76th day after UCAN filed its request) and continuing until full payment of the award is made.

UCAN's request does not allocate payment of the compensation for the costs of its participation between Pacific and General Telephone Company of California (GTEC). A very large portion of the work performed by UCAN concerns Pacific. UCAN's request that the Commission undertake a study of inside wire maintenance policies, however, applies to both utilities. Under these circumstances, we will allocate to GTEC responsibility for paying \$1,000.00 of UCAN's award.

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.

Findings of Fact

1. UCAN requested compensation totaling \$21,824.84 for its contribution to D.92-01-023.
2. UCAN was found eligible to receive compensation in D.92-01-023.
3. UCAN made a significant contribution to D.92-01-023 in that the Commission granted its request to undertake an independent study of inside wire maintenance issues, and approved advice letters negotiated by UCAN which changed Pacific's inside wire pricing practices.
4. UCAN should be compensated for 6.8 hours for preparing its requests for eligibility and compensation.
5. UCAN's costs are less than 25% of the total fees awarded to UCAN.
6. 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 with Mr. Shames' training, experience, and expertise.
7. Attachment B to UCAN's request includes 7.8 hours of time on demand-side management issues, which are unrelated to the advocacy of its position regarding inside wire maintenance.
8. Most of UCAN's participation in this proceeding concerned Pacific; however, UCAN's adopted recommendation for the Commission to undertake a study of inside wire maintenance policies concerns both Pacific and GTEC.

Conclusions of Law

1. UCAN made a substantial contribution to D.92-01-023 and to changes in Pacific's inside wire pricing practices.

2. Reasonable compensation for UCAN's contribution to D.91-05-028 is \$20,732.84.

3. Pacific should pay all compensation for UCAN's participation in this proceeding except that GTEC should pay \$1,000 of UCAN's total award.

O R D E R

IT IS ORDERED that:

1. Pacific Bell (Pacific) shall pay Utility Consumers' Action Network (UCAN) \$19,732.84 within 30 days as compensation for UCAN's substantial contribution to Decision (D.) 92-01-023 and advice letter filings by Pacific. Pacific shall also pay interest at the three-month commercial paper rate commencing on April 8, 1992 and continuing until full payment of the award is made.

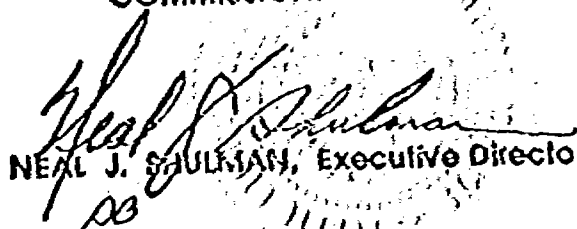
2. General Telephone of California (GTEC) shall pay UCAN \$1,000 within 30 days as compensation for UCAN's substantial contribution to D.91-05-028. GTEC shall also pay interest at the three-month commercial paper rate commencing on April 8, 1992 and continuing until full payment of the award is made.

This order is effective today.

Dated April 22, 1992, at San Francisco, California.

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

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


NEAL J. SAULMAN, Executive Director