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Decision 92-05-036 May 8, 1992

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 and SAN DIEGO GAS & ELECTRIC)
COMPANY for Authority to Merge SAN)
DIEGO GAS & ELECTRIC into SOUTHERN)
CALIFORNIA EDISON)

A.88-12-035
(Filed Dec. 17, 1988
amended April 17, 1989)

ORDER MODIFYING AND DENYING
REHEARING OF DECISION 91-12-045

Utility Consumers' Action Network (UCAN) has filed an application for rehearing of Decision 91-12-045 wherein we awarded UCAN \$123,236.93 in intervenor fees for its substantial contribution to our Decision 91-05-028, denying a proposed merger between Southern California Edison Company and San Diego Gas and Electric Company.

The \$123,236.93 awarded to UCAN for its substantial contribution to Decision 91-05-028 represented approximately 53% of its total request for compensation in the amount of \$243,794.31. As set forth in the challenged decision, UCAN made a substantial contribution to Decision 91-05-028 in three areas: net benefits, competition and public interest.[1] (See D.91-12-045 at 9.)

UCAN has not challenged our findings of its substantial contribution but has alleged that we should not have discounted its time spent filing motions and responses thereto. We

1 The Commission may award intervenor fees to a customer making a substantial contribution to the Commission's order or decision where participation without an award imposes a significant financial impact. (Pub. Util. Code §1801 et seq.; Commission Rules of Practice and Procedure, rule 76.51 et seq.)

concluded that roughly one-half of the 15 filings for which UCAN sought contribution assisted us in reaching Decision 91-05-028. UCAN did not separately account for time spent on each filing, therefore, in accordance with the rule set forth in Re Southern California Gas Company (1985) 18 Cal.P.U.C.2d 485[2], we awarded UCAN compensation for time spent on such filings in proportion to its contribution on substantive issues.[3]

UCAN also complains that we should not disallow hours that duplicate arguments made by other parties in their pleadings. However, a full award may be made only if the intervenor's presentation does not materially duplicate arguments among the parties; when it does, an award of compensation must be reduced accordingly. (Rule 76.53(c).) Our decision to disallow hours we found duplicative is in accordance with rule 76.53(c).

UCAN further alleges that the 53% prorated award improperly includes 40.4 hours spent developing its arguments regarding the shared jurisdiction issue. We are puzzled by UCAN's contention, as we certainly did not award UCAN any compensation for its work on this issue, finding that it did not make a substantial contribution. (D.91-12-045 at 8.)

Finally, UCAN argues that we erred in awarding it only

2 In Re Southern California Gas Company, *supra*, 18 Cal.P.U.C.2d 485, we ruled that when an intervenor requests compensation for participation in Commission proceedings but fails to allocate time by issue, our consideration will include several factors in determining the number of compensable hours: (1) the number of issues on which the intervenor makes a significant contribution compared with the total number of issues addressed by the intervenor, (2) the significance to the Commission decision of the issues on which a contribution was or was not made, and (3) the type of proceeding. (18 Cal.P.U.C.2d at 486.)

3 The allocation of hours for which UCAN received its award totaling \$123,236.93, is set forth on page 9 of the challenged decision.

one-third of its claimed hours on the public interest issue.[4] We agree in part.

Our award was based on our finding that UCAN had substantially contributed to the public interest issue on one of the three grounds it pursued under Public Utilities Code section 854. However, although UCAN did pursue three elements of the public interest issue during the proceeding, it claims, in its application for rehearing, that in its request for compensation, it only requested compensation for two of those elements, subsections (6) and (7) of section 854(c).

We believe that UCAN should receive compensation on the public interest issue, consistent with the elements of the section 854(c) issue for which it claims compensation and in proportion to its substantial contribution on this issue. We have once again reviewed UCAN's request for compensation and agree that it only sought compensation on two of the public interest elements of section 854(c). Therefore, we will modify Decision 91-12-045 to increase UCAN's award to reflect 50% contribution for the 143.6 hours spent on the section 854(c) public issue argument. We are not persuaded by UCAN's arguments concerning Pacific Gas & Electric (1985) 17 Cal.P.U.C.2d 520, and Public Advocates, Inc (1990) 37 Cal.P.U.C.2d 481; both cases are readily distinguished, as the seven paragraphs of section 854(c) are individual factors, each presenting a separate issue.

No further discussion is required of the applicant's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by the applicant, we conclude that sufficient grounds for rehearing of Decision 92-01-018 have not

4 The public interest issue concerns Public Utilities Code section 854(c) which provides that "(b)efore authorizing the acquisition or control of any electric [or] gas ... utility ... the commission shall consider each of the criteria listed in paragraphs (1) to (7), inclusive, and find, on balance, that the acquisition or control proposal is in the public interest."

been shown. However, we erred on our finding that UCAN should receive one-third of its claimed hours (47.7 hours) on the public interest issue and order the decision modified as set forth below.

Therefore, IT IS ORDERED:

1. That rehearing of Decision 91-12-045 as modified herein is denied.

2. That Decision 91-12-045 is modified as follows:

(a) On page 8, the first full paragraph is deleted in its entirety and the following is added in its place:

"UCAN has sought compensation only for its work on the §854(c)(6) and (7) issues and not for its work on the §854(c)(2) issue. UCAN's request does not allocate the 143.6 hours devoted to the criteria of §854(c)(6) and (7). Because we have found that UCAN made a substantial contribution on only the §854(c)(7) issue, it is appropriate to allow compensation for only one-half of the hours listed, or 71.8 hours."

(b) On page 9, the last paragraph is modified as follows:

"Public Interest	<u>184.0 hours</u>	<u>71.8 hours</u>
TOTAL	414.5 hours	242.7 hours"

(c) On page 10 the first sentence is modified to delete both references to "53%" and add in their place "59%".

(d) On page 11, the first full sentence of the second full paragraph is modified as follows:

"We will compensate UCAN for 59% of the remaining 188.8 hours devoted to motions, responses and related activities, or 111.4 hours."

(e) On page 12, the second sentence of the first full paragraph is modified to delete "53%" and add "59%," and to delete "310.3" and add "345.4".

(f) On page 12, the second sentence of the third full paragraph is modified to delete "142.5" and add "158.7".

(g) On page 13, the third sentence of the second full paragraph is modified to delete "53%" and add in its place "59%"; "17.0 hours" is deleted and "19 hours" is added in its place.

(h) On page 15, in the last paragraph, "\$123,236.93" is deleted and "\$136,034.17" is added in its place.

(i) On page 17, the first and second paragraphs, from the top of the page through the sentence "Edison shall pay 80% of this total (\$98,589.54) and SDG&E shall pay 20% (\$24,647.39), " are deleted. The following is added in their place:

<u>Item</u>	<u>Request</u>	<u>Award</u>	<u>Total</u>
<u>Attorney's Time</u>			
Net Benefits	119.2 hrs.	59.6 hrs.	\$ 8,344
Compensation	111.3	111.3	15,582
Public Interest	184.0	71.8	10,052
Motions	197.7	111.4	15,596
Discovery	585.4	345.4	48,356
Briefing	268.9	158.7	22,218
Compensation	47.2	25.0	3,750
Travel	32.0	19. @ \$70	1,330
Subtotal			\$125,228
<u>Costs</u>			
Experts	\$8,654.00	\$5,105.86	
Copying, Postage	4,699.91	4,699.91	
Travel	1,000.40	1,000.40	
Subtotal			\$10,806.17
<u>Total Award</u>			\$136,034.17

Edison shall pay 80% of this total (\$108,827.33), and SDGE shall pay 20% (\$27,206.84)."

(j) Finding of Fact No. 6 is deleted in its entirety and the following is added:

"6. Of the 414.5 hours UCAN devoted to the substantive issues in this case, 242.7 hours, or about 59%, were spent on issues on which we found UCAN made a substantial contribution to D.91-05-028."

(k) Conclusion of Law No. 2 is deleted in its entirety and the following is added:

"2. Reasonable compensation for UCAN's contribution to D.91-05-028 is \$136,034.17."

(l) Conclusion of Law No. 3 is modified to delete "\$98,589.54"; added in its place is "\$108,827.33".

(m) Conclusion of Law No. 4 is modified to delete "\$24,647.39"; added in its place is "\$27,206.84".

(n) Ordering Paragraph No. 1 on page 21 is modified to delete "\$98,589.54"; added in its place is "\$108,827.33".

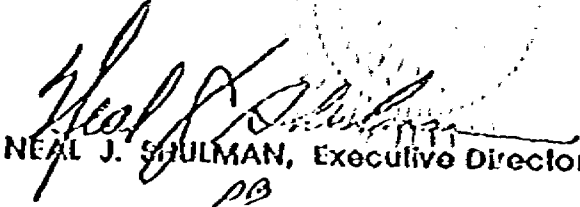
(o) Ordering Paragraph No. 2 is modified to delete "\$24,647.36"; added in its place is "\$27,206.84".

This order is effective today.

Dated May 8, 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. SHULMAN, Executive Director