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Decision 92-07-066 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS &)
 ELECTRIC COMPANY: 1) for Authority)
 to Increase its Electric Rates)
 Effective May 1, 1992; 2) for a)
 Commission Order Finding the)
 Company's Gas & Electric Operations)
 Reasonable for the Applicable Record)
 Periods. (U 902-E))

ORIGINAL
 Application 91-09-059
 (Filed September 30, 1991)

OPINION DECIDING UTILITY CONSUMERS' ACTION NETWORK'S
 REQUEST FOR COMPENSATION

Summary

Utility Consumers' Action Network (UCAN) requests a finding of eligibility and an order awarding compensation for its contribution to Decision (D.) 92-04-061. The decision addresses the forecast phase of San Diego Gas & Electric Company's (SDG&E) Energy Cost Adjustment Clause (ECAC) proceeding.

We find UCAN eligible for compensation, and for its substantial contribution to the decision we award UCAN \$22,534.26.

Finding of Eligibility

Rule 76.54 requires filing of a request for eligibility within 30 days of the first prehearing conference or within 45 days of the close of the evidentiary record. UCAN's request for finding of eligibility and award of compensation was filed on February 13, 1992. UCAN's request is unopposed. Since the close of the evidentiary record in this case occurred with the filing of the Joint Recommendation on February 14, 1992, UCAN's filing is timely.

Rule 76.54(a) sets out four requirements for a request for finding of eligibility:

- *(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...;

- *(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; and
- *(4) A budget for the customer's presentation."

Significant Financial Hardship

Rule 76.54(a)(1) requires a showing of significant financial hardship. Rule 76.52(f) defines significant financial hardship as follows:

"Significant financial hardship' means both of the following:

- *(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."

UCAN states that it satisfies both prongs of this definition. Its representation of 55,000 residential and small business ratepayers in this proceeding covers a specific interest

not otherwise adequately represented. And UCAN was the only actively involved consumer advocacy group in the proceeding.

Additionally, UCAN states that the economic interest of the UCAN membership is small in comparison to the costs of effective participation in the proceeding. The economic benefit to UCAN's individual members is indirect and nominal in comparison to the costs of effective participation.

UCAN asserts that it would be uneconomic and unwise for individual ratepayers to separately incur the expected costs of participation, as cited above. UCAN points out that while its participation may generate savings for all ratepayers, those savings, when scaled down on an individual basis, will not approach the overall costs of participation.

We agree that UCAN's participation therefore meets the dual requirements of Rule 76.52(f).

Statement of Issues

Rule 76.54(a)(2) requires the party to submit a statement of issues that the party intends to raise. UCAN had already completed its participation in this proceeding at the time of the filing of its request. UCAN's role in the resolution of revenue requirement and allocation issues and its advocacy in rate design issues is a matter of record.

Estimate of the Compensation and Budget

Rule 76.54(a)(3) and (a)(4) require an estimate of the compensation to be sought and a budget for the presentation, respectively. UCAN's estimate and budget are identical to its request for compensation.

Common Legal Representative

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal representative is appropriate. Under Rule 76.55, our decision on the request for eligibility may designate a common legal representative. No party commented on the appropriateness of a

common legal representative, and we find no need to designate such a representative in this proceeding.

Summary of Finances

Pursuant to the requirements of Rule 76.54(a)(1), UCAN provided its most recent fiscal year budget and financial audit.

UCAN states that it receives only a small percentage of its income from grants. The bulk of its income is derived from membership fees and contributions. Its revenues are occasionally supplemented by intervenor compensation awards. UCAN receives monies from no other sources and limits its membership contributions to no more than \$150 annually, thus precluding large contributions from individuals or businesses.

Conclusion on Eligibility

UCAN has timely filed its request for a finding of eligibility and has met the four requirements of Rule 76.54(a). In addition, no party has responded to UCAN's request or raised the issue of the appropriateness of a common legal representative. Therefore, UCAN is eligible for compensation for its participation in this case and any future proceedings in 1992.

Request for Compensation

UCAN fully participated in all aspects of this proceeding. It was an active participant in all conferences and hearings. UCAN submitted testimony pertaining to SDG&E's revenue requirements and revenue allocation, participated in discovery, technical, and settlement workshops, and litigated a remaining revenue requirement matter that could not be resolved in settlement workshops.

UCAN's request for compensation is made pursuant to Rule 76.56. The requirements of this rule are addressed below.

Timeliness of Request

The Commission's decision (D.92-04-061) in this phase of SDG&E's ECAC proceeding was mailed on April 23, 1992. UCAN's

request for compensation was filed on February 13, 1992. Thus UCAN's request was timely filed.

Substantial Contribution

Rule 76.52(g) defines "substantial contribution" as follows:

"'Substantial contribution' means that, 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's contribution to the ECAC proceeding focused upon the revenue requirements, rate design, and revenue allocation aspects of these applications. UCAN prepared direct testimony and was an active participant in workshops and settlement conferences through which resolution of all issues was achieved.

In its testimony and advocacy, UCAN sought the inclusion of the Heber sale proceeds, deferral of attorneys' fees from the Century Power settlement, reduction of residential coincident demand costs and non-coincident transmission and distribution demand costs, correction of the Rate A non-coincident demand determination, recalculation of demand determinants for the sum of Rates AD and AL-TOU, and a more modest tier closure than proposed by DRA. UCAN's participation and substantial contribution was expressly acknowledged by the parties.

UCAN points out that it is the Commission's long-standing policy to encourage intervenors to participate in workshops and settlement conferences. And UCAN's contributions to settled applications have been recognized in the past by the Commission and have been compensated (D.90-09-073, 30 CPUC 2nd 299 at 339 (1988)).

UCAN believes that the express acknowledgement of UCAN's contributions in this case constitutes a basis for an award of 100%

of its reasonable expenses in conducting discovery, preparing and participating in workshops, developing testimony, and participating in hearings.

We conclude that UCAN made a substantial contribution on the issues addressed and resolved by the Joint Recommendation, and that it is entitled to an award for fees and other reasonable costs related thereto.

Amount of Award

A summary of UCAN's fee request is set forth below:

Attorney's fees for preparatory and hearing work: 118.8 hours at \$145 per hour	\$17,226.00
Prepare intervenor compensation request: 4.8 hours at \$145 per hour	696.00
Expert witness fees:	
37 hours at \$85 per hour	3,145.00
10.50 hours at \$55 per hour	577.50
Other reasonable costs (Rule 76.52(c)): travel, photocopying, postage, & telephone	<u>889.76</u>
Total	\$22,534.26

UCAN states that it has excluded from its request any hours spent on legal fees not directly relevant to the preparation of issues that were discussed in settlement.

UCAN seeks reimbursement for its attorney, Michael Shames, at the rate of \$145 per hour. According to UCAN this rate represents the reasonable market value of the services performed by Shames in accordance with Rule 76.22(i) and is consistent with the Commission's determination of UCAN fees in other cases before the Commission. Throughout 1991, UCAN was awarded \$140 per hour for Shames' work. UCAN asserts that his efforts in this case and his increased expertise warrant a rate of \$145 per hour for work conducted largely in 1992.

Shames has maintained detailed timesheets, indicating the number of hours devoted to this proceeding. These hours are broken down by date and work description in Attachment B to UCAN's request. Allocation of time by "issue" is limited to "Revenue Requirements, Allocation and Preparatory Work" and "Compensation Request Preparation" categories.

UCAN's expert witness fees are comprised of work by Messrs. Marcus and Nahigian of JBS Energy Inc. A breakdown of their fees and supporting invoices are found in Attachment C to UCAN's request. UCAN notes that both experts have been recognized by the Commission as qualified experts. (D.91-09-056.) All of the experts' time was spent on the revenue allocation and rate design issues. UCAN further notes that the expert witness fees charged by Messrs. Marcus and Nahigian have been deemed reasonable by the Commission (D.90-09-073). According to UCAN the expertise of Marcus and Nahigian commands much greater fees in the market; however, they heavily discount their fees to UCAN for charitable purposes.

We agree that \$145 per hour is a reasonable rate for attorney Shames given his experience in prior Commission proceedings. Also, we have previously found the hourly rates for expert witnesses Marcus and Nahigian of \$85 and \$55 per hour reasonable. Given the scope of work involved in this phase of SDG&E's ECAC proceeding, we agree that the number of hours billed are reasonable, the other reasonable costs comply with Rule 76.52(c), and for its substantial contribution to D.92-04-061, UCAN should be awarded \$22,534.26.

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 recordkeeping 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's request for eligibility was timely filed and addresses all four elements required by Rule 54(a) of the Commission's Rules of Practice and Procedure.

2. UCAN has demonstrated that its participation would pose a significant financial hardship as defined in Rule 76.52(f).

3. It is not necessary at this time to designate a common legal representative for the interests UCAN represents in this proceeding.

4. UCAN made a substantial contribution to D.92-04-061.

5. UCAN timely filed its request for compensation, and its filing provides a breakdown of charges by date and work description.

6. An hourly rate of \$145 is a reasonable fee for an attorney of Michael Shames' training and experience.

7. Hourly rates of \$85 and \$55, respectively, are reasonable fees for Messrs. Marcus and Nahigian of JBS Energy Inc.

8. For its substantial contribution to D.92-04-061, UCAN is entitled to an award for fees and reasonable costs of \$22,534.26.

Conclusions of Law

1. UCAN should be found eligible to claim compensation for its substantial contribution to D.92-04-061.

2. UCAN has met its burden of showing financial hardship, and this determination should apply throughout calendar year 1992.

3. Since UCAN did make a substantial contribution to D.92-04-061, it should be awarded fees and reasonable costs of \$22,534.26.

ORDER

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) is eligible to claim compensation for its substantial contribution to Decision (D.) 92-04-061.

2. As compensation for UCAN's substantial contribution to D.92-04-061, in accordance with Rule 76.61, San Diego Gas & Electric Company shall pay UCAN \$22,534.26 within 30 days.

3. This proceeding remains open for consideration of other matters.

This order is effective today.

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

DANIEL Wm. FESSLER

President

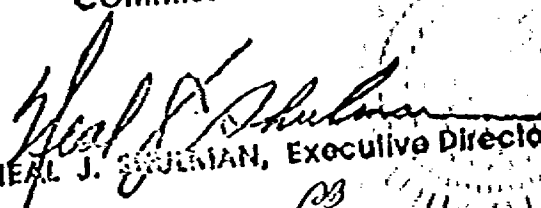
JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SURJANIAN, Executive Director