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Decision 95-08-039 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY: (1) for Authority to Decrease its Electric Rates Effective May 1, 1995; and (2) for a Commission Order Finding SDG&E's Nuclear and Certain Natural Gas Operations and Expenses Reasonable for the Applicable Record Period (U-902-E)

Application 94-10-023 (Filed October 18, 1994)

ORIGINAL

UCAN submitted testimony on January 17, 1995 detailing its concerns about a revenue allocation methodology in its filing. (Exhibit 9, Testimony of William Marcus on behalf of UCAN.)

OPINION DECIDING UCAN'S REQUEST FOR COMPENSATION

Summary In this testimony, UCAN raised concerns about five methodological aspects of SDG&E's filing. According to UCAN:

Utility Consumers' Action Network (UCAN) is awarded compensation of \$17,761.08 for its contribution to Decision (D.) 95-04-076 in the forecast phase of San Diego Gas & Electric Company's (SDG&E) 1995 Energy Cost Adjustment Clause (ECAC) proceeding.

Eligibility On January 12, 1995 UCAN filed a Notice of Intent to Claim Compensation. On January 31, 1995, the administrative law judge (ALJ) issued a ruling finding UCAN eligible for an award of compensation. The ruling included a finding that UCAN's participation in this proceeding without an award of compensation would impose a significant financial hardship on it.

Timeliness of Filing D. 95-04-076 issued on April 26, 1995, decided the issues in the forecast phase of this ECAC proceeding. Thus, D. 95-04-076 was a "final order or decision" under Rule 76.72 of the Commission's Rules of Practice and Procedure. On May 3, 1995, UCAN

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filed a request for award of intervenor compensation. UCAN's filing meets the requirements of Public Utilities (PU) Code

§ 1804(c) for timeliness.

Substantial Contribution

The Commission's decision in this proceeding, D.95-06-076, approved a Joint Recommendation signed by the active parties.

Under PU Code § 1803, before awarding compensation the Commission must find that the customer made a substantial contribution as that term is defined in PU Code § 1802(h).

UCAN submitted testimony on January 17, 1995 detailing its concerns about SDG&E's revenue allocation methodologies in its filing. (Exhibit 9, Testimony of William Marcus on behalf of UCAN.)

In this testimony, UCAN raised concerns about five methodological aspects of SDG&E's filing. According to UCAN, during discussions on a Joint Recommendation, the parties found all of UCAN's points meritorious and that resulted in modifications to SDG&E's proposals. These points and the resulting modifications are described fully in D.95-04-076 in Appendix A as follows:

- a. Load Research Data. UCAN asserted that SDG&E incorrectly relied upon erroneous 1989 Residential and Schedule A customer classes' load research data. The parties agreed that the incorrect data was used and, instead, adopted the numbers provided by UCAN. (Appendix A, p. 9.)
- b. Forecast Noncoincident Demands for the AD and AL-TOU Classes. UCAN noted that in the 1993 General Rate Case (GRC), the Commission adopted a methodology using a two-part calculation to account for migration of customers from Schedule AD to Schedule AL-TOU. SDG&E's methodology was not consistent with this adopted method. The parties agreed that the two-step method detailed by UCAN was appropriate and adopted the calculation advanced by UCAN. (Appendix A, p. 9.)

c. Coincident Demand Calculation Methodology

UCAN opposed SDG&E's loss of load probability (LOLP)-weighted coincident demand calculation adjustment, arguing that it was in variance with methodology adopted in the 1993 GRC. UCAN proposed a revision to the methodology which uses the adopted allocators by customer class adjusted by the ratio of the current forecast period class energy to the 1993 GRC adopted class energy. The parties reached a compromise position on the difference by deploying an interim solution based upon 1989-1993 load research data. (Appendix A, pp. 10-11)

d. Capping Equal Percentage of Marginal Cost (EPMC) Allocation

UCAN proposed adopting caps of +3% and -4% around the adopted System Average Percentage Change (SAPC). The parties agreed to adopt caps as proposed by UCAN. (Appendix A, pp. 11-12.)

e. Variable Operation and Maintenance (O&M) Costs Included in Marginal Energy Cost

UCAN contested SDG&E's inclusion of -1.0 mills/kwh for variable O&M costs in its marginal energy cost used for revenue allocation. SDG&E agreed that the figure was in error and should have been -0.1 mills/kwh. The parties agreed with UCAN and adopted a figure of 0.0 mills/kwh for this proceeding.

UCAN believes that the settlement agreement set forth in Appendix A, in the decision makes very clear the substantive nature of UCAN's contribution to this proceeding and comports with the definition of substantial contribution as set forth in PU Code S 1802(h).

We conclude that UCAN has made a substantial contribution to the Commission's decision in this proceeding. UCAN is awarded compensation as follows:

UCAN's Request

For its attorney, Michael Shames, UCAN requests an hourly rate of \$175 for work performed in 1995. Shames was awarded an hourly rate of \$165 for work performed in 1993 (D.93-10-023). We find that the requested increase to an hourly rate of \$175 for work performed in 1995 is reasonable based on Shames' experience and demonstrated skill in representing UCAN before this Commission since 1985. For co-counsel Lisa Briggs, UCAN requests an hourly rate of \$120. Briggs was compensated at a rate of \$100 per hour for work done in 1993. At the time, she had no experience in Commission matters. However, for the work performed in 1995, Briggs had almost two years of experience on utility issues. Therefore, we find that an hourly rate of \$120 is reasonable for work performed in 1995.

UCAN retained JBS Energy Inc. to conduct the expert analysis of SDG&E's application. The work was performed by William Marcus and Jeff Nahigian. The Commission has previously approved for Marcus an hourly rate of \$125 for work in 1994 (D.95-05-003). Given his extensive experience in Commission proceedings, we will approve an hourly rate for Marcus of \$130 for work done in 1995. Also, for Nahigian, the Commission has previously approved an hourly rate of \$60 for work done in 1993 (D.94-01-003). Based on his experience in Commission proceedings, we will approve an hourly rate for Nahigian of \$75 for work done in 1995. UCAN, in its request for compensation, provides a list of the time spent by day, a brief description of the activity, a breakdown of the miscellaneous costs, and a detail of the hours spent. Also, a breakdown of JBS Energy, Inc. costs is provided.

UCAN is awarded compensation as follows:

Attorney Fees

Michael Shames	61.2 hours x \$175	\$10,710.00
Lisa Briggs	8 hours x \$120	960.00

Miscellaneous Costs

Travel		892.00
Copying and Postage		129.43

JBS Energy, Inc.

William Marcus	37.25 hours x \$130	4,842.50
Jeff Nahigian	0.75 hours x \$75	56.25
Travel and Miscellaneous		170.90

Total \$17,761.08

As stated in PU Code § 180143 (f) our intervention compensation rules should be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding. In a proceeding where hearings are held, duplication of effort is fairly simple to identify. On the other hand, where settlements are signed, as in this proceeding, duplication is less apparent.

In the past we have applied a discount factor to the hours claimed by intervenors for participation in settlement discussions. For example, in D:88-12-085 we noted that UCAN could not clearly assign its contribution to a settlement which was ultimately adopted, and applied a 26% discount factor to the hours claimed. In D:91-12-055 we applied a 10% factor to the hours claimed by TURN in a proceeding resolved by a settlement. However, in this instance, we will not apply a discount factor because of the protracted nature of the settlement discussions and UCAN's active role in promoting the settlement.

Notwithstanding the lack of a formal record of the negotiations leading to the Joint Recommendation, an assessment can be made of UCAN's contribution by reviewing the issues that UCAN apparently prevailed on, or by matching UCAN's position with the Joint Recommendation as discussed above. Accordingly, we conclude that UCAN's request for compensation should be approved.

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 factual 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 was found eligible to file a request for compensation in this proceeding in the ALJ's ruling of January 31, 1995.

2. UCAN filed a timely request for an award of compensation for its contribution to D.95-04-076.

3. UCAN's involvement in the settlement discussions made a significant contribution to D.95-04-076.

4. Compensation in the amount of \$17,761.08 for UCAN's participation in this proceeding is reasonable.

Conclusions of Law

In this instance, it is inappropriate to discount UCAN's hours for compensation because of the special contribution made by UCAN in achieving settlement given the divergence in the positions of the parties in this proceeding.

2. UCAN should be awarded compensation for its contribution to D.95-04-076 in the amount of \$17,761.08.

ORDER

IT IS ORDERED that Utility Consumers' Action Network (UCAN) is awarded \$17,761.08 in compensation for its contribution to Decision 95-04-076. San Diego Gas & Electric Company shall, within 30 days of the effective date of this order, pay UCAN \$17,761.08 plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G-13, with interest beginning July 18, 1995, and continuing until the full payment is made.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wealey Franklin
Acting Executive Director