

AUG 14 1995

Decision 95-08-040 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company for Authority to Increase its Rates and Charges for Electric, Gas and Steam Service, effective January 1, 1993. (U 9024M)

Application 91-11-024 (Filed November 15, 1994)

ORIGINAL

UCAN states that it focused its efforts on residential rate design issues so as not to duplicate the efforts of other parties... (See Decision 95-04-048 for appearances.)

**OPINION DECIDING UCAN'S REQUEST FOR COMPENSATION**

**Summary**

Utility Consumers' Action Network (UCAN) is awarded compensation of \$22,533.51 for its contribution to Decision D. 95-04-048 in San Diego Gas & Electric Company's (SDG&E) 1995 Rate Design Window 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. 95-04-048 issued April 26, 1995, decided the issues in SDG&E's 1995 Rate Design Window proceeding. Thus, D. 95-04-048 was a "final order or decision" under Rule 76.72 of the Commission's Rules of Practice and Procedure. On May 3, 1995, UCAN filed a request for award of intervenor compensation. UCAN's filing meets

2001 1 1 00A

the timeliness requirements of Public Utilities (PU) Code § 1804(c).

Substantial Contribution

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).

The Commission's decision in this proceeding, D.95-04-048, adopted the Joint Testimony of the active parties.

UCAN believes that its presence in the proceeding and at the negotiations substantially assisted in the development of Joint Testimony (Exhibit 509) which was adopted by the Commission in the resolution of the issues.

UCAN states that it focused its efforts on residential rate design issues so as not to duplicate the efforts of other parties. UCAN conducted discovery and submitted written comments on January 17, 1995 detailing its concerns about SDG&E's revenue allocation methodologies in its filing. In this testimony, UCAN raised numerous concerns about residential rate impacts caused by SDG&E's filing. The parties found that many, although not all, of UCAN's points were meritorious and that recognition resulted in adjustments to SDG&E's proposals. These points and the resulting adjustments are as follows:

a. Rule 20A Reductions

UCAN was concerned about the impact of this proposal upon state undergrounding policy and the potential for ratepayer cross-subsidization of shareholder assets. After much negotiation, the parties arrived at a compromise position which prevents ratepayer subsidy of the credits offered by SDG&E and which preserves the cities' rights to underground facilities if they choose.

b. Service Establishment Charge

UCAN was concerned that the charge was unduly burdensome for a customer who has been disconnected due to nonpayment. UCAN recommended a number of modifications including advance notice, customer options, and limits to pole disconnection. These modifications were agreed to by the parties and adopted by the Commission. (Decision, pp. 13-14)

c. Customer Meter Rereads

UCAN recommended that SDG&E's proposal be modified to impose a charge only for the 3rd (and subsequent) reading within a 12-month period. The parties agreed and the Commission adopted the proposal. (Decision, pp. 16-17)

d. Meter Test Charge

UCAN recommended that SDG&E's proposal be modified so that a customer would not be charged for a meter test if the results of the previous test were not shared with that customer. The parties agreed and the Commission adopted the proposal. (Decision, pp. 20-21)

e. Special Service Charge

UCAN presented a number of objections to the SDG&E proposal. After negotiations, the parties entered into a compromise in which the service charge would be phased in and reviewed in the 1996 Rate Design Window. SDG&E agreed to provide specific demographic data with which the parties and the Commission could evaluate this program. This proposal has been adopted by the Commission. (Decision, pp. 22-24.)

f. Non-Monthly Meter Reading

UCAN opposed this proposal as it was deemed to be inequitable to customers subjected to this plan. After negotiations, the parties reached a compromise which required SDG&E to provide a one-time payment to affected customers, and which described a number of protections for customers whose meters were estimated. SDG&E also agreed to provide detailed data with which

the parties and the Commission could evaluate this program.  
(Decision pp. 27-29.)

These issues represented the focus of UCAN's efforts. UCAN believes that the decision makes very clear the substantive nature of UCAN's contribution to this proceeding and the extent to which UCAN's contributions supplemented rather than duplicated the efforts of the Division of Ratepayer Advocates.

We agree that UCAN's contribution comports with the definition of substantial contribution as set forth in PU Code § 1802(h) and justifies compensation for UCAN's costs. UCAN's Request

For its attorney, Michael Shames, UCAN requests compensation at an hourly rate of \$175 plus an efficiency adder of \$25 per hour for Shames' expert contribution. UCAN relies upon PU Code § 1806 which instructs the Commission to take into consideration the market rates paid to persons of comparable training and experience.

UCAN argues that the \$25 efficiency adder is consistent with Commission policy to encourage the efficiencies offered by intervenor counsel who are sufficiently well-versed in the topic area to eschew retainer of expert assistance. (See D.95-02-066.) In this case, Shames consulted with JBS Energy, Inc. rather than have JBS Energy, Inc. prepare the comments and work product. According to UCAN, JBS Energy, Inc. might have legitimately billed \$6,000-\$8,000 for its work, and this cost was largely avoided due to the work by Shames.

We note that Shames was awarded an hourly rate of \$165 for work performed in 1993. 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. However, we decline UCAN's request for an efficiency adder of \$25 per hour. In D.95-02-066 cited by UCAN, and in

the parties and the Commission could evaluate this program.  
(Decision pp. 27-29)

These issues represented the focus of UCAN's efforts. UCAN believes that the decision makes very clear the substantive nature of UCAN's contribution to this proceeding and the extent to which UCAN's contributions supplemented rather than duplicated the efforts of the Division of Ratepayer Advocates.

We agree that UCAN's contribution comports with the definition of substantial contribution as set forth in PU Code S. 1802(h) and justifies compensation for UCAN's costs. UCAN's Request

For its attorney, Michael Shames, UCAN requests compensation at an hourly rate of \$175 plus an efficiency adder of \$25 per hour for Shames' expert contribution. UCAN relies upon PU Code S. 1806 which instructs the Commission to take into consideration the market rates paid to persons of comparable training and experience.

UCAN argues that the \$25 efficiency adder is consistent with Commission policy to encourage the efficiencies offered by intervenor counsel who are sufficiently well-versed in the topic area to eschew retainer of expert assistance. (See D. 95-02-066.) In this case, Shames consulted with JBS Energy, Inc. rather than have JBS Energy, Inc. prepare the comments and work product. According to UCAN, JBS Energy, Inc. might have legitimately billed \$6,000-\$8,000 for its work, and this cost was largely avoided due to the work by Shames.

We note that Shames was awarded an hourly rate of \$165 for work performed in 1993. 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. However, we decline UCAN's request for an efficiency adder of \$25 per hour. In D. 95-02-066 cited by UCAN, and in

D.95-04-003, we allowed efficiency adders in instances where one person assumed a dual role of technical witness and advocate. In this proceeding UCAN requests compensation for its attorney and for its technical consultant, separately. Therefore, we are not persuaded that any real efficiencies have been achieved. Accordingly, UCAN's request for an efficiency adder is denied.

UCAN requests an hourly rate of \$135 for William Marcus of JBS Energy, Inc. 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, the Commission has previously approved an hourly rate of \$95 for Gayatri Schilberg. (D.95-05-003.)

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.

We will award compensation as follows:

Attorney Fees

Michael Shames \$105.5 hours x \$175 = \$18,462.50

Miscellaneous Costs

Travel 669.00  
Copying and Postage 123.76

JBS Energy, Inc.

William Marcus \$13.25 hours x \$130 = 1,722.50

Gayatri Schilberg \$12.25 hours x \$95 = 1,163.75

Travel and Miscellaneous 92.00

Total \$22,533.51

As stated in PU Code § 1801.3(f), our intervenor 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 reached, 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% discount 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 UCAN's active role in promoting and forming the settlement, and the clear linkage between UCAN's positions and individual provisions of the settlement. It is, therefore, easier for us to observe UCAN's contribution to the settlement than it is in many other types of cases where the result is an aggregate one, and parties' settlement efforts more duplicative.

Notwithstanding the lack of a formal record of the negotiations leading to the Joint Testimony, 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 Testimony 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 actual time spent by each participant of similar interests otherwise adequately represented.

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.95-04-048.

3. UCAN's involvement in the settlement discussions made a significant contribution to D.95-04-048.

4. Compensation in the amount of \$22,533.51 for UCAN's participation in this proceeding is reasonable.

Conclusions of Law

1. 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.95-04-048 in the amount of \$22,533.51.

ORDER

IT IS ORDERED that Utility Consumers' Action Network (UCAN) is awarded \$22,533.51 in compensation for its contribution to Decision 95-04-048. San Diego Gas & Electric Company shall, within 30 days of the effective date of this order, pay UCAN \$22,533.51 plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical

Acting Executive Director



Release, Q313, with interest beginning July 18, 1995, and employee  
continuing until the full payment is made on other costs for which

This order is effective today.

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

1995

UICM filed a timely request for an award of compensation  
for its contribution to D.92-04-048.

P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

4. Compensation in the amount of \$22,233.21 for UICM's  
participation in this proceeding is reasonable.

(Conclusions of law

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

2. UICM should be awarded compensation for its contribution  
to D.92-04-048 in the amount of \$22,233.21.

O R D E R

IT IS ORDERED that Utility Consumers' Action Network  
I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY  
Wesley Franklin  
Acting Executive Director