

Decision 00-01-045 January 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY: (1) informing the Commission of the Probable Timing of the End of its Electric Rate Freeze, (2) for Authorization to Change Electric Rates Through Implementation of Interim Ratemaking Mechanisms Concurrent with Termination of the Electric Rate Freeze, and (3) for Authorization to Change Electric Rates by Adding New, and Revising or Terminating Existing, Rate and Revenue Mechanisms and Rate Designs.

Application 99-02-029
(Filed February 19, 1999)

And Related Matters.

Application 99-01-019
Application 99-01-034
(Filed January 15, 1999)

OPINION

This decision grants Utility Consumers' Action Network (UCAN) an award of \$16,823.06 in compensation for its contribution to Decision (D.) 99-05-051.

1. Background

In D.99-05-051, the Commission approved, with certain conditions, a settlement filed in this proceeding on April 15, 1999, which establishes accounting, ratemaking, and customer information requirements for San Diego Gas & Electric Company (SDG&E) in ending the "transition period" enacted by Assembly Bill (AB) 1890. The end of SDG&E's transition period signifies that pursuant to AB 1890, SDG&E has recovered all uneconomic generation costs, and

the requirement that SDG&E's rates be frozen at levels in effect on June 10, 1996, is removed.

The Commission held a prehearing conference at which the Administrative Law Judge (ALJ) and the Assigned Commissioner urged the parties to settle outstanding issues. Subsequently, SDG&E filed a motion to adopt a settlement on April 15, 1999. The settlement was signed by the 13 active parties in this proceeding. The Commission held a day of hearing on April 20, 1999 to clarify the terms of the settlement.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Sections 1801-1812 of the Public Utilities Code.¹ Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

¹ All statutory references are to the Public Utilities Code.

“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 has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

3. NOI to Claim Compensation

UCAN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated April 2, 1999. The same ruling found that UCAN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in several ways. (Section 1802(h).) It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total. The

Commission has provided compensation even when the position advanced by the intervenor is rejected.²

UCAN asserts that D.99-05-051 is final as to the issues dealing with SDG&E's implementation of the post-rate freeze mechanisms in Phase I of this proceeding. Many of the unresolved issues will be deferred to Phase II. However, as a decision in that second phase is not expected to be issued until the end of 1999 or sometime in 2000, UCAN states that it will seek compensation separately for the second phase. At this time, UCAN seeks compensation only for work done in early 1999.

According to UCAN, it made a number of factual and legal contentions that were incorporated into D.99-05-051 by virtue of its approval of the April 15 settlement. In the settlement agreement itself, the parties recognized UCAN's contributions. (Settlement Agreement, p. 3.)

Specifically, UCAN believes it substantially contributed to D.99-05-051 in four areas:

1. Disposition of the Revenue Reduction Bonds. This issue was resolved on an interim basis after extensive negotiations among the parties and revisions by the Commission. As UCAN indicated in its March 2nd protest, UCAN opposed a straight give-back of the monies as proposed by SDG&E. The final decision reflected UCAN's position by deferring the matter to Phase II.

² D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

2. Communications Plan. UCAN proposed and the parties adopted the Communications Plan objectives, and it was very active in shaping the language to be used by SDG&E in communicating the end of the rate freeze to SDG&E customers.
3. Utility Commodity Service. UCAN opposed SDG&E's Commodity PBR proposal and its intimation that it could go outside of the PX to purchase power. This matter was deferred to Phase II, as recommended by the parties. In the interim, SDG&E agreed to continue to provide commodity default service without a PBR and without purchasing from outside of the PX.
4. Rate Design. UCAN agreed with SDG&E that the current rate design would be used as an interim measure. The parties discussed some of the rate design challenges and agreed to defer the controversial matters to Phase II.

We agree that UCAN has made a substantial contribution to D.99-05-051 in the areas it identifies.

5. The Reasonableness of Requested Compensation

UCAN requests compensation in the amount of \$16,823.06 as follows:

Attorney Fees

Michael Shames	79.7 hours ³
Less for Petition for Modification	<u>9.3</u>
Total	70.4 hours @ \$195 = \$13,728.00

Expert Witness

JBS Energy, Inc.	
William Marcus	14.25 hours @ \$150 = \$2,137.50

³ Includes 50% of travel time and 50% of time preparing fee request.

Miscellaneous Costs

Photocopying and Postage	= \$ 110.56
Travel Cost	= \$ 847.00
	Subtotal = \$ 957.56
TOTAL	= \$16,823.06

5.1 Hours Claimed

According to UCAN, the work of its attorney Michael Shames was limited to preparation of the protest, discovery and negotiation. In preparing this case, UCAN was obligated to conduct discovery, coordinate among a number of other parties in this proceeding and prepare a settlement document. JBS Energy, Inc. was used as a consultant and limited to the time of William Marcus.

UCAN documented the claimed hours by presenting a daily breakdown of hours for Shames with a brief description of each activity. UCAN states that it has deducted 9.3 hours that relate to a response to a SDG&E petition for modification of the Commission decision that determined the cost of capital applied to unused revenue reduction bond monies. The petition is linked to this proceeding and the outcome will have a direct impact upon SDG&E's application. However, as this issue is not addressed by D.99-05-051, UCAN believes it should defer seeking compensation for it at this time. We agree that UCAN may seek recovery of these hours in a future request for compensation.

5.2 Hourly Rates

UCAN requests compensation for Shames at a rate of \$195 per hour for work in 1999. This rate represents an approximate 2% increase over the \$190 rate for Shames that was accepted by the Commission for his work in 1998 (see D.99-09-006, p. 7 and D.98-04-027). We agree that a rate of \$195 per hour for Shames is reasonable for his work in 1999.

UCAN states that the rate of \$150 per hour for Marcus has been established in other Commission decisions (see D.99-02-066, p. 7). We agree that a rate of \$150 per hour for Marcus is reasonable.

5.3 Other Costs

We agree that UCAN's request for \$957.56 to cover miscellaneous expense, is reasonable.

5.4 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Section 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo., at 31-33, and Finding of Fact 42.) In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Unfortunately, UCAN did not address the overall benefits to ratepayers of its participation relative to the compensation it requests. Arguably, UCAN's participation was productive in that the costs it claims for its participation were less than the benefits realized to the extent that the settlement adopted in D.99-05-051 implemented certain accounting, ratemaking, and customer information requirements for compliance by SDG&E following the ending of the transition period.

We put UCAN on notice that in all future compensation requests, it should address the matter of overall benefits of its participation. Also, we will require a detailed accounting for time charged by JBS Energy, Inc. employees, allocating time by issue (see D.99-12-005).

6. Award

We award UCAN \$16,823.06, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 23, 1999 (the 75th day after UCAN filed its compensation request) and continuing until the utility makes full payment of the award.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission staff may audit UCAN's records related to this award. Thus, UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Section 311(g)(2) – Uncontested decision grants relief requested

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. UCAN has made a timely request for compensation for its contribution to D.99-05-051. UCAN has made a showing of significant financial hardship by

demonstrating that the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

2. UCAN contributed substantially to D.99-05-051.

3. UCAN has requested hourly rates that are no greater than the market rates for individuals with comparable training and experience.

4. For work done in 1999, \$195 per hour is a reasonable compensation rate for Shames, considering his experience, effectiveness, and rates paid other attorneys that appear before the Commission.

5. For work done in 1999, \$150 per hour is a reasonable compensation rate for Marcus' professional services considering his experience, effectiveness, and rates paid other experts.

6. The miscellaneous costs incurred by UCAN are reasonable.

Conclusions of Law

1. UCAN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

2. UCAN should be awarded \$16,823.06 for its contribution to D.99-05-051.

3. This order should be effective today so that UCAN may be compensated without unnecessary delay, and interest costs may be minimized.

O R D E R

IT IS ORDERED that:

1. The Utility Consumers' Action Network (UCAN) is awarded \$16,823.06 in compensation for its substantial contribution to Decision 99-05-051.

2. San Diego Gas & Electric Company (SDG&E) shall pay UCAN \$16,823.06 within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning August 23, 1999, and continuing until full payment is made.

This order is effective today.

Dated January 20, 2000, at San Francisco, California

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners