

Decision 00-03-051 March 16, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to Solicit Comments and Proposals on Distributed Generation and Competition in Electric Distribution Service.

Rulemaking 98-12-015  
(Filed December 17, 1998)

**OPINION AWARDDING COMPENSATION**

This decision grants Utility Consumers' Action Network (UCAN) and James Weil an award of \$28,980.95 and \$6,250.55, respectively, in compensation for their contribution to Decision (D.) 99-10-065.

**1. Summary**

Rulemaking (R.) 98-12-015 was initiated in December 1998 to consider whether the California Public Utilities Commission (Commission) should pursue reforms in the regulatory framework governing electricity distribution service. In particular, the rulemaking focused on gathering information about issues concerning distributed generation and distribution competition. Instead of creating new policies in the rulemaking, the intent was to identify the range of issues associated with these concepts, and to allow development of a roadmap to address these issues.

On March 17, 1999, parties filed opening and reply comments on the topics set forth in the rulemaking. A full panel hearing was held on June 1, 1999, in San Francisco. Members of the Commission, the California Energy Commission, and the Executive Director of the Electricity Oversight Board attended the full panel hearing. An opportunity was provided to all parties to file written responses to the questions that each panel was asked to address at the full panel hearing. A

draft decision was issued September 21, 1999. Comments and reply comments to the draft decision were filed.

In D.99-10-025, we established a roadmap which outlines how the Commission, in cooperation with the California Energy Commission, the Electricity Oversight Board, and the Legislature, plans to address the issues surrounding distributed generation, distribution competition, and the role of the utility distribution company in the competitive retail electricity market. The decision bifurcated the issues raised in R.98-12-015 into two tracks. The first track addresses issues pertaining to distributed generation through a new rulemaking, R.99-10-025. The second track will address distribution competition issues and the role of the utility distribution company in a competitive retail electric market.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 1801-1812. (All statutory citations are to Public Utilities Code.) 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,

“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 that determines whether the customer has made a substantial contribution and what amount of compensation to award. 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 on March 17, 1999, and was found to be eligible for compensation in this proceeding by a ruling dated April 20, 1999. The same ruling found that UCAN had demonstrated significant financial hardship.

Weil timely filed his NOI on May 17, 1999, and was found to be eligible for compensation in this proceeding by a ruling dated July 1, 1999. The same ruling found that Weil had demonstrated significant financial hardship.

### **4. Contributions to Resolution of Issues/Overall Benefits of Participation**

A party may make a substantial contribution to a decision in one of several ways.<sup>1</sup> It may offer a factual or legal contention upon which the Commission

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<sup>1</sup> Pub. Util. Code §1802(h).

relied in making a decision.<sup>2</sup> Or it may advance a specific policy or procedural recommendation that the Administrative Law Judge or Commission adopted.<sup>3</sup> 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.<sup>4</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

In addition, 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.

D.99-10-065 discusses many issues without resolving them. After reviewing the recommendations and positions of the parties, including intervenors, the decision adopted a procedural roadmap laying out the steps by

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 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).

which issues will be resolved or further studied. For this reason, an intervenor in this proceeding may have difficulty in establishing that it prevailed on a given issue. In some ways, participation in R.98-12-015 is similar to participation in workshops and working groups that this Commission has encouraged in the past. The participation of intervenors was beneficial because it engaged all stakeholders in examining important issues. Therefore, for purposes of finding substantial contribution in this proceeding, we will broadly interpret Section 1801.3(b) in order to support the underlying legislative intent. Likewise, because D.99-10-065 neither adopted substantive rule changes, nor dealt with utility revenue requirements or cost allocation issues, it is difficult to assign a dollar value to the results of intervenors' participation. Therefore, this decision does not explicitly weigh the costs of participation against the benefits realized.

#### **4.1 Utility Consumers' Action Network**

UCAN believes it has made a substantial contribution through focus on two primary subjects: role of the utility distribution company and market power implications of utility distribution company involvement in distributed generation. UCAN's comments recommended the utility distribution company role be limited to a wires only function. D.99-10-065 directs staff to include this option in the staff study. UCAN recommended reviewing options for competition for default providers. D.99-10-065 includes this topic as part of the staff study. UCAN's comments identify numerous market power concerns associated with utility distribution company ownership of distributed generation resources. Although D.99-10-065 does not explicitly cite UCAN's comments, the decision acknowledges these concerns as the basis for further study of ownership of distributed generation.

Because D.99-10-065 did not resolve disputed issues, it is difficult to identify how arguments of a specific party influenced the outcome of the

decision. However, it is clear that in the areas UCAN addressed, UCAN's positions contributed to the Commission's decisionmaking process by ensuring a full discussion of different substantive positions. We agree that UCAN has made substantial contributions to D.99-10-065 as well as the scope of the staff study in the areas identified. However, there is some duplication regarding the positions presented by UCAN and other parties. We will address duplication issues below.

#### **4.2 James Weil**

Weil believes he has made a substantial contribution regarding four major issues: distribution competition, rate design, stranded costs, and procedural steps. In addition, Weil believes he has contributed to the discussion on several other issues. Weil states that his comments were unique in distinguishing between rivalry for service territory and effective competition, and the Commission's decision concluded that further study to define distribution competition was warranted. Weil's comments pointed out that rate design for standby and backup service will impact adoption of distributed generation technologies. D.99-10-065 asked parties to submit testimony on standby rate design considerations in the new rulemaking. Weil commented on the limited potential for stranded distribution costs and the detrimental impact of stranded cost recovery on competition. D.99-10-065 solicits comments on the potential for stranded costs and discussed the position of some parties that distribution competition will not cause stranded costs. On procedural matters, Weil recommended that the Commission convene evidentiary hearings to assess market conditions and move quickly to address interconnection standards. D.99 10-065 called for testimony on many issues with technical workshops on interconnection issues.

As discussed in connection with UCAN, it is difficult to identify how arguments of a specific party influenced the outcome of the decision. However, it is clear that in the areas he addressed, Weil's positions contributed to the Commission's decisionmaking process by ensuring a full discussion of different substantive positions. We agree that Weil has made substantial contributions to D.99-10-065 as well as the scope of R.99-10-025 in the areas he identifies. However, there is some duplication regarding the positions presented by Weil and other parties. We will address duplication issues below.

## **5. Reasonableness of Requested Compensation**

### **5.1 Utility Consumers' Action Network**

UCAN requests compensation of \$28,551.95 as follows:

#### **Attorney Costs**

Michael Shames (151.5 <sup>6</sup> hours @ \$195 <sup>7</sup> /hr)	\$29,542.50
Less 25%	<u>(\$7,385.62)</u>
Subtotal	\$22,156.88

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<sup>6</sup> UCAN's request includes the full number of hours claimed and reduces the resulting total by 25 percent.

<sup>7</sup> UCAN includes hours spent traveling in its total hours for Shames, but adds only half of them in its total calculation for Shames. In the future, UCAN should list those hours separately, and apply a rate of half that allowed for the individual's professional work, rather than multiplying the hours by half and adding them into Shames' professional time. In addition, UCAN included the time spent preparing its compensation request at the full hourly rate.

**Expert Costs**

Eric Woychik (47.3 hours @ \$145/hr) \$ 3,750<sup>8</sup>

Other Costs:

Travel	\$ 916.00	
Copies/ Postage	<u>\$1,729.07</u>	
Total Other Costs	\$2,645.07	<u>\$ 2,645.07</u>
	Total	\$28,551.95

The 25% reduction in professional hours for both Shames and Woychik reflects duplication and the difficulty in assessing how the Commission weighed the positions of parties in issuing its procedural roadmap.

**5.1.1 Hours Claimed**

UCAN documented the claimed hours by presenting a daily breakdown of hours for Shames. UCAN voluntarily discounts these hours by 25%. The hourly breakdown reasonably supports UCAN's claim for Shames' professional hours (132.7 hours). We find that given the length and scope of the proceeding and UCAN's participation, these hours are reasonable. UCAN also submitted breakdowns of expert time by date and described the work performed by its expert. The hourly breakdown presented reasonably supports this claim.

UCAN requests 13.8 hours for travel time (already reduced by 50%) and 5 hours for preparation of the compensation request. In the future, UCAN should list these hours separately, and apply a rate of half that allowed for the individual's professional work, rather than multiplying travel hours by 0.5 and adding them to Shames' professional time. Because UCAN did not

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<sup>8</sup> Woychik worked 47.3 hours. However, Strategic Integration agreed to perform services under a contract not to exceed \$5,000, and that figure has been further reduced by 25% for duplication.



separate its professional hours from those associated with its travel time and preparation of its compensation request, UCAN applied the 25% discount to these hours as well. For purposes of calculating an award, we will separate out UCAN's full number of hours of travel time and time spent preparing its compensation request and apply half the hourly rate. We will not reduce this time for duplication of effort.

We note further that UCAN used its resources efficiently by coordinating extensively with Office of Ratepayer Advocates and The Utility Reform Network to avoid duplication where possible and voluntarily discounted its hours for duplication.<sup>9</sup>

### **5.1.2 Hourly Rates**

UCAN seeks an increase in the hourly rate for attorney Shames for work performed in 1999. Shames has been previously been awarded \$190/hour for work in 1998. UCAN seeks a 2% increase to \$195/hour. The increase in the hourly rate sought by UCAN is appropriate given the market rates paid to persons with comparable training and experience. We will apply half this hourly rate for travel time and time spent preparing the compensation request.

UCAN does not seek a specific hourly rate for expert Woychik given the nature of their contract. The billing rate for this arrangement in effect

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<sup>9</sup> In D.00-03-005 we clarified that "duplication by itself does not result in an automatic reduction to the compensation award. Rather, the party requesting compensation must show that notwithstanding any duplication, its position is distinguishable from the others, and its argument was uniquely persuasive in the Commission's adoption of the joint position of the parties." (p.15.)

In this case, because of the number of parties involved and the fact that unique contributions were not easily identifiable, we agree that adjustment for duplication is appropriate, and adopt the adjustment proposed by UCAN and Weil.

amounts to less than \$106/hour, well within the \$145/hour rate we approved for Woychik in D.99-11-006.

**5.1.3 Other Costs**

UCAN seeks \$2,645.07 in other costs. UCAN's request for compensation itemizes its travel, copying and postage costs. We find UCAN's expenses reasonable.

**5.2 James Weil**

Weil requests compensation of \$6,250.55 as follows:

Professional Time (22.3 hrs @ \$200/hr)		\$4,460.00
Travel/Compensation Request (9.5 hrs @ \$100/hr)		<u>\$ 950.00</u>
	Subtotal	\$5,410.00
Other Costs:		
Copies	\$490.09	
Postage	\$326.36	
Travel	<u>\$ 24.10</u>	
Total Other Costs	\$840.55	<u>\$ 840.55</u>
	Total	\$6,250.55

This request reflects a 25% reduction in professional hours to reflect duplication of efforts and the difficulty in assessing how the Commission weighed the positions of parties in issuing its procedural roadmap.

**5.2.1 Hours Claimed**

Weil documented the claimed hours by presenting a daily breakdown of his hours with a brief description of each activity. The hourly breakdown reasonably supports his claim for total hours.

Weil provides a breakdown of his time by issue. In all, he spent 25.5 hours of professional time on the major issue areas for which he claims compensation. He voluntarily discounts these hours by 25%, claiming only 19.1 of the hours that can be allocated by issue. He claims an additional

3.2 hours of professional time for general matters that cannot be allocated to specific issues. After adjustment, he requests only 22.3 hours for professional time. Given Weil's contribution to D.99-10-065, the 22.3 hours of professional time claimed is reasonable.

Weil requests 9.5 hours for travel time and preparation of the compensation request. Proportionately, this represents a significant proportion of the total hours claimed. However, we will not further discount the time associated with these activities beyond the adjustment to the hourly rate discussed below. The time spent by Weil to prepare the request is not out of line for preparation of a standard compensation request.

### **5.2.2 Hourly Rates**

Weil requests compensation at \$200 per hour for professional services. The Commission previously set Weil's compensation at \$200 per hour for professional services performed in 1998. We follow D.99-08-005 and grant Weil's request for compensation at the rate of \$200 per hour for professional time spent working in this proceeding and \$100 per hour for time spent on travel and compensation related activities.

### **5.2.3 Other Costs**

Weil requests \$840.55 for other costs (e.g., copying, postage, travel). This represents a relatively high percentage of the total compensation claimed, but the high percentage appears to be due to the limited number of professional hours claimed and the length of the service list rather than inefficiency on Weil's part. The request for costs appears reasonable.

**6. Award**

**6.1 Utility Consumers' Action Network**

UCAN is awarded \$28,980.95 as calculated below.<sup>10</sup>

Shames

Professional Time (132.7 hrs @ \$195/hr)	\$25,876.50
less 25% for duplication (\$ 6,469.12)	
Travel/Compensation Request (32.6hrs @ \$97.50/hr)	<u>\$ 3,178.50</u>
Subtotal	\$22,585.88
Strategy Integration	\$ 3,750.00

Other Costs:

Copies/Postage	\$1,729.07	
Travel	<u>\$ 916.00</u>	
Subtotal Other	\$2,645.07	<u>\$ 2,645.07</u>
Total		\$28,980.95

**6.2 James Weil**

Weil is awarded \$6,250.55 as calculated below.

Professional Time (22.3 hrs @ \$200/hr)	\$ 4,460.00
Travel/Compensation Request (9.5 hrs @ \$100/hr)	<u>\$ 950.00</u>
Subtotal	\$ 5,410.00

Other Costs:

Copies	\$490.09	
Postage	\$326.36	
Travel	<u>\$ 24.10</u>	
Subtotal Other	\$840.55	<u>\$ 840.55</u>
Total		\$ 6,250.55

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<sup>10</sup> UCAN requested \$28,551.95. The amount awarded is higher than requested because we have separated UCAN's travel and compensation preparation hours from professional hours. We do not reduce these hours for duplication as UCAN did in its compensation request. This change causes the award to increase by \$429.

### 6.3 Summary

We award UCAN and Weil \$28,980.95 and \$6,250.55, respectively, calculated as described above. We will assess responsibility for payment in accordance with their respective 1998 California jurisdictional revenues.<sup>11</sup>

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 March 6 and March 8, 2000 (the 75<sup>th</sup> day after UCAN and Weil, respectively, filed their compensation requests), and continuing until the utility makes its full payment of award.

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

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<sup>11</sup> Southern California Edison Company (Edison) filed a response to the compensation requests on January 21, 2000. Weil filed a reply on February 3, 2000. Edison does not challenge the requests for compensation but points out concerns over the proper funding source for intervenor compensation in quasi-legislative proceedings. The Commission considered this issue recently in D.00-01-020. That decision established that effective July 1, 2001, in quasi-legislative rulemaking proceedings affecting an industry or multiple industries, we will require all energy, telecommunications and water utilities in affected industry to pay any compensation award, regardless of whether that utility participated in the proceeding. The program will be funded through the fees collected on an annual basis from regulated energy, telecommunications, and water utilities under authority conferred by Public Utilities Code § 401 et seq. In the interim, we continue our practice of requiring those larger utilities participating in a rulemaking proceeding to pay any compensation awards.

## **7. 311(g)(2) Relief Granted**

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 waived.

### **Findings of Fact**

1. UCAN has made a timely request for compensation for its contribution to D.99-10-065.

2. Weil has made a timely request for compensation for his contribution to D.99-10-065.

3. UCAN contributed substantially to D.99-10-065.

4. Weil contributed substantially to D.99-10-065.

5. \$195 per hour is a reasonable compensation rate for Shames' professional services considering his experience, effectiveness, and rates paid other experts.

6. UCAN has not requested an hourly rate for Woychik given the nature of their contractual arrangement. The effective hourly rate of the contract is well within the rate that has already been approved by the Commission.

7. Weil has requested hourly rates that have already been approved by the Commission.

8. The miscellaneous costs incurred by UCAN are reasonable.

9. The miscellaneous costs incurred by Weil are reasonable.

### **Conclusions of Law**

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

2. Weil has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

3. UCAN should be awarded \$28,980.95 for its contribution to D.99-10-065.

4. Weil should be awarded \$6,250.55 for his contribution to D.99-10-065.

5. This order should be effective today so that UCAN and Weil may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED that:**

1. Utility Consumers' Action Network (UCAN) is awarded \$28,980.95 in compensation for its substantial contribution to Decision (D.) 99-10-065.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall pay UCAN a total of \$28,980.95 in proportion to their respective 1998 jurisdictional revenues within 30 days of the effective date of this order. PG&E, Edison, and 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 March 6, 2000, and continuing until full payment is made.

3. James Weil is awarded \$6,250.55 in compensation for his substantial contribution to D.99-10-065.

4. PG&E, Edison, and SDG&E shall pay James Weil a total of \$6,250.55 in proportion to their respective 1998 jurisdictional revenues within 30 days of the effective date of this order. PG&E, Edison, and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as

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reported in Federal Reserve Statistical Release G.13, with interest, beginning March 8, 2000, and continuing until full payment is made.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

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