

Decision 99-02-028 February 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company to Establish an Experimental Performance-Based Ratemaking Mechanism (U 902-M).

Application 97-09-049
(Filed September 30, 1997)

O P I N I O N

This decision grants Utility Consumers' Action Network (UCAN) an award of \$8,067.83 in compensation for its substantial contribution to Decision D.98-08-038.

1. Background

On September 30, 1997, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 97-09-049 to establish a performance-based ratemaking (PBR) mechanism for gas procurement. Prior to the application, SDG&E had been operating under rules established in Decision (D.) 93-06-092. That decision directed the utility to conduct an experimental gas procurement PBR mechanism for two (2) years commencing August 1, 1993. The initiative replaced the traditional regulatory approach in which the utility recovered gas procurement costs on a dollar for dollar basis subject only to a reasonableness review by the Commission.

D.95-04-051 and D.97-02-012 extended the experiment beyond the two year mark, and the latter decision directed SDG&E to file an application for a permanent gas procurement PBR. Workshops and other public participatory functions were directed to precede the application. The application at hand, A.97-09-049, thus followed.

In A.97-09-049, SDG&E proposed the establishment of a rate cap mechanism for natural gas procurement. Whereas the earlier indices had been based on certain national and regional gas costs, the focus of the new proposal derived from a single, unbundled rate capped at 102% of a defined California Border Index (CBI). Contrary to the wishes of its critics, SDG&E's new proposal did not include a revenue sharing provision and certain other protections deemed necessary by those groups.

UCAN filed a timely protest to the application on October 29, 1997. Other parties protesting the application were Enron Capital & Trade Resources (Enron) and the Office of Ratepayer Advocates (ORA). Two prehearing conferences (PHC) were held at Commission headquarters, the first on December 9, 1997 and the second on February 5, 1998.

On February 20, 1998, SDG&E, ORA, and Enron (settling parties) filed a joint motion of stipulated settlement in the proceeding. On March 19, 1998, UCAN filed opposition to the settlement. The settling parties replied on April 7, 1998.

On August 6, 1998, in D.98-08-038, the Commission unanimously approved the settlement subject to the settling parties agreeing to enhanced reporting requirements from those contained in the submitted settlement agreement. After receiving such concurrence from SDG&E, ORA, and Enron, the Administrative Law Judge (ALJ) ordered the proceeding closed on September 1, 1998.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to the Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) of the code requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the PHC or by a

date established by the Commission. The NOI must present information regarding the nature and extent of compensation and 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 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 § 1806.

3. UCAN's Eligibility for Compensation

On January 5, 1998, UCAN timely filed its NOI. UCAN was found to be eligible for compensation in the proceeding by an assigned ALJ's ruling dated February 13, 1998.

4. UCAN's Contribution to the Decision

UCAN states that it made a substantial contribution to the decision. UCAN cites the settlement proposed by SDG&E, ORA, and Enron, and states that it was the only party to identify the deficiencies in the terms of settlement.

UCAN opposed the settlement, contending that it lacked sufficient evaluative criteria by which to judge the PBR program's future effectiveness. In its opposition, UCAN emphasized the possibility of unintended consequences resulting from the proposed settlement. UCAN criticized the notion that only two cost figures, SDG&E's and the CBI, were designated as the focus of evaluation. The absence of a "trigger" mechanism in evaluating the gas market during exigent circumstances was additionally cited. UCAN recommended a more formalized reporting framework be established.

The Commission found several UCAN's observations to be sound, although we did not embrace UCAN's recommendations to deal with the potential problems.

UCAN's case for more definitive criteria in evaluating the gas procurement mechanism was beneficial. Acting on UCAN's observations, we added supplemental reporting requirements on SDG&E and ORA to reflect the potential problems identified by UCAN.

UCAN's contribution to the decision was, thus, adopted "in part" by the decision. (PU Code § 1802(h).) As such, UCAN satisfies the "substantial contribution" criterion and is entitled to compensation.

5. The Reasonableness of Requested Compensation

UCAN requested compensation in the amount of \$8,067.83 as follows:

Attorney Fees:

Michael Shames			
40.8 hours x \$185	Subtotal	=	\$7,548.00

Other Costs:

a. Air Travel		\$ 386.00
Local Transportation		56.00
Parking		20.00
Photocopying		9.70
Postage		14.53
Telephone/Telecopy		<u>33.60</u>

Subtotal \$519.83	=	<u>\$ 519.83</u>
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Total requested		\$8,067.83
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5.1. Reasonableness of Claimed Attorney Hours

The major portion of the requested compensation lies in the hourly fee of UCAN's counsel, Michael Shames. Of the 40.8 hours of time claimed between October 20, 1997 and September 23, 1998, thirty-one and three/tenths (31.3) are claimed for conferences, meetings, reviews, and telephone conversations with principals and, in some instances, with third parties. Additionally, travel time of thirteen (13) hours is submitted at the standard 50% reimbursement rate approved by the Commission. The third and final component of the attorney's time is a claim of three (3) hours for drafting the

intervenor's compensation request.¹ We find the total hours (40.8) requested by Mr. Shames to be reasonable.

5.2. Reasonableness of Attorney's Hourly Fee

Mr. Shames requests an hourly market rate of \$185 per hour. The Commission has approved that rate for Mr. Shames in D.98-08-027. At the approved hourly fee for Mr. Shames, the amount of \$7,548.00 is authorized.

5.3. Cost Reimbursement

The Commission finds UCAN's breakout of costs to be sufficiently detailed and entirely appropriate. The requested amount of \$519.83 is approved.

6. Award

We award UCAN \$8,067.83, 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 the 75th day after UCAN filed its compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission 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 rate, fees paid to consultants, and any other costs for which compensation may be claimed.

¹ Although our policy is to award compensation at a 50% reimbursement rate for preparing compensation requests, given the limited number of hours billed for preparation of this compensation request, we make no additional deduction.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code 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.98-08-038.
2. UCAN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. UCAN has made a substantial contribution to D.98-08-038.
4. UCAN has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.
5. The miscellaneous costs incurred by UCAN are reasonable.

Conclusions of Law

1. UCAN has fulfilled the requirements of PU §§ 1801-1812 which govern awards of intervenor compensation.
2. UCAN should be awarded \$8,067.83 for its substantial contribution to D.98-08-038.
3. This order should be effective today so that UCAN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) is awarded \$8,067.83 in compensation for its substantial contribution to Decision 98-08-038.
2. San Diego Gas & Electric Company (SDG&E) shall pay UCAN \$8,067.83 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 the 75th day from request and continuing until full payment is made.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners