

Decision 99-11-006 November 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric
Company (SDG&E) for Authority to Implement a
Distribution Performance-Based Ratemaking
Mechanism (U 902-M).

Application 98-01-014
(Filed January 16, 1998)

OPINION

This decision grants the Utility Consumers Action Network (UCAN) an award of \$245,953 in compensation for its contribution to Decision (D.) 98-12-038 and D.99-05-030 and the Natural Resources Defense Council (NRDC) an award of \$61,726 in compensation for its contribution to D.99-05-030.

1. Background

In D.97-04-067, the Commission ordered San Diego Gas & Electric Company (SDG&E) to file an application requesting approval of a distribution performance-based ratemaking (PBR) mechanism. In D.97-12-041, the Commission ordered SDG&E to file a cost of service study in order to set the initial rates for the new ratemaking mechanism. In response to those orders, on January 6, 1998, SDG&E filed Application (A.) 98-01-014 requesting authority to establish a new level for electric distribution and gas base rate revenues and a distribution PBR mechanism. The Office of Ratepayer Advocates (ORA) and UCAN filed timely protests, to which SDG&E filed a reply. After two prehearing conferences, the parties decided to participate in a series of informal technical workshops held in San Francisco. Negotiations between the parties led to two settlement agreements. One agreement, adopted in D.98-12-038, resolved all issues in connection with the base rate revenue requirement, the starting point

for SDG&E's proposed PBR mechanism. A second agreement resolved all issues surrounding performance indicators and was ultimately approved by the Commission as part of D.99-05-030.

The net effect of the settlements was that only PBR design issues remained for the Commission to resolve. The parties narrowed the contested issues to five, and addressed them in four days of evidentiary hearings followed by open and reply briefs. The outstanding matters involved (1) sharing mechanism, (2) rate indexing, (3) separate PBR mechanisms, (4) productivity, and (5) retention of the Gas Fixed Cost Account and treatment of Z factors. The Commission resolved these issues and adopted a final PBR mechanism for SDG&E in D.99-05-030.¹

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 Pub. Util. 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

¹ UCAN and NRDC timely filed a joint application for rehearing of D.99-05-030. Our findings today in no way prejudges our disposition of the application for rehearing.

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 and NRDC timely filed NOIs after the first prehearing conference. An ALJ ruling dated April 23, 1998, found UCAN and NRDC eligible for compensation in this proceeding. The same ruling found that NRDC and UCAN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in three ways.² It may offer a factual or legal contention upon which the Commission relied in

² Pub. Util. Code Section 1802(h).

making a decision³ or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ 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.⁵ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁶

4.1 UCAN's Contribution

This proceeding spanned almost two years and involved, in a sense, two separate proceedings—a cost of service review and the development of a PBR mechanism. UCAN claims to have contributed substantially to both.

UCAN states that it attended and actively participated in the informal workshops and the negotiations which ultimately resulted in a settlement of all issues involving base revenue requirements for SDG&E. UCAN notes that although the nature of a settlement makes the contributions of each party more difficult to precisely define, in this case, the final agreement does expressly adopt UCAN's proposed revenue allocation methodology and acknowledges UCAN's contribution to the resolution of tree-trimming issues. UCAN likewise notes that it coordinated extensively with ORA in dividing up issues for analysis, thereby conserving ORA resources and preventing duplication of effort.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 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).

We agree that UCAN contributed substantially to the cost of service portion of A.98-01-014. UCAN, in conjunction with ORA, conducted an extensive review of SDG&E's cost data. UCAN and ORA's efforts resulted in a settlement recommending a 2.46% decrease in electric revenues (as opposed to the 8.05% increase sought by SDG&E) and a 1.97% increase in gas revenues (as opposed to SDG&E's requested 15.24% increase). Moreover, ORA's Response to UCAN's Request for Compensation, filed June 30, 1999, corroborates UCAN's claim that it sought to avoid duplication of effort with ORA. ORA's Response states that UCAN proactively coordinated with ORA to the extent that SDG&E's application received a far more detailed review than would have occurred had UCAN not participated. As ORA notes, the thorough record developed by UCAN and ORA facilitated achieving a quick settlement of the cost of service issues. We therefore find that UCAN's participation in this portion of the proceeding resulted in conservation of Commission and party resources that would have been required had the issues been litigated. We conclude that UCAN substantially contributed to D.98-12-038.

For ease of resolution, the parties divided the issues surrounding the development of a PBR mechanism for SDG&E into two categories: issues arising in the setting of performance indicators and those involving the revenue benchmarks and sharing.

After workshops and negotiations, the parties submitted to the Commission a joint settlement resolving all performance indicator issues. UCAN claims to have actively participated in and substantially contributed to that settlement agreement. In support of its contention, UCAN argues that the parties to the agreement adopted several of UCAN's proposals, and that the settlement expressly acknowledged UCAN's contribution to the settlement. Furthermore, UCAN notes the Commission based its one change to the settlement upon the

testimony of UCAN attorney Michael Shames (Shames). As the record reflects UCAN's extensive participation in the proceedings, as well as the parties' adoption of several UCAN proposals, we find that UCAN contributed substantially to the settlement of performance indicator issues adopted in D.99-05-030.

The Commission in D.99-05-030 decided the remaining unresolved issues. The parties narrowed the scope of litigation to five contested matters. UCAN claims to have substantially contributed to the resolution of four of those matters: sharing, rate indexing, separate PBRs for metering and billing, and productivity. UCAN seeks no compensation for its work on matters involving retention of Gas Fixed Cost Account and Z factors.

As evidence of its substantial contribution to the Commission's decision on sharing, UCAN points to the fact that the Commission adopted UCAN's proposal and relied upon the evidence submitted by UCAN's expert William Marcus (Marcus) in rejecting SDG&E's approach.

Although the Commission did not adopt UCAN's proposal to set up separate PBRs for billing and metering, it did acknowledge UCAN's concerns over the potential for cross-subsidization between billing and metering in a single PBR mechanism. The Commission responded to the problem by incorporating an ongoing monitoring and evaluation program as well as a 2001 review of cross-subsidization into the adopted mechanism. As such, UCAN maintains that it contributed substantially to the Commission's resolution of this issue.

Similarly, UCAN admits that the Commission did not adopt in full its indexing formula or productivity proposal. UCAN argues, however, that it substantially contributed to the resolution of those issues to the extent that the Commission adopted UCAN's factual contentions and incorporated them into

the final design of the PBR mechanism. UCAN's primary concern in proposing a revenue-per-customer index focused on the possibility that the utility could reap a windfall under a sales-moderated mechanism. The Commission responded to UCAN's concern not by adopting its specific proposal, but by finding UCAN's factual contention (the windfall potential) persuasive and modifying the sharing mechanism to account for this effect. Likewise, in deciding upon an appropriate productivity standard, the Commission chose a middle ground between the standards proposed by UCAN, ORA and SDG&E, while adopting UCAN's and ORA's recommendation that the productivity factor be modeled after that of SoCal Gas.

The record supports UCAN's claim that its participation influenced the Commission's decision on these three issues, but that the Commission failed to adopt UCAN's proposals in full. Nevertheless we find that UCAN's active participation in litigating these issues contributed substantially to the Commission's resolution of them. In each case, factual contentions advocated by UCAN were adopted by the Commission and influenced the design of the final PBR mechanism. Given the complexity of the issues involved, it is not unlikely that the Commission would resolve disputed matters by attempting to accommodate the diverse but legitimate concerns expressed by the various parties. Section 1802(h) provides that a substantial contribution may be found if a customer has substantially assisted the Commission in the making of its decision because the decision adopts a factual contention presented by the customer. For reasons stated above, we conclude that UCAN has satisfied this standard and contributed substantially to D.99-05-030 insofar as it resolves issues relating to sharing, rate indexing, the windfall potential accompanying a single PBR mechanism, and a productivity standard.

4.2 NRDC's Contribution

NRDC claims it contributed substantially to the resolution of two main issues: performance indicators and the indexing mechanism.

With respect to performance indicators, NRDC challenged the environmental citizenship indicator proposed by SDG&E. It pointed out the substantial problems with two components of SDG&E's proposed indicator—the Recycling Indicator and the Vegetation Public Education Indicator. NRDC participated in the workshops and negotiations that resulted in the settlement of this issue. NRDC claims that as a result of its participation, SDG&E agreed to withdraw its proposed environmental indicator. Thus, although the settlement does not adopt the recycling indicator proposed by NRDC, it claims to have contributed substantially because it achieved the elimination of SDG&E's allegedly poorly crafted indicators.

NRDC also claims to have contributed substantially to the development of performance indicators by advocating for the adoption of a Distributed Generation indicator. NRDC acknowledges that the Commission did not adopt its proposal, but believes it contributed because Conclusion of Law No. 8 of D.99-05-030 states that "performance indicators related to distributed generation should be established..." after the Commission develops a particular approach for distributed generation in Rulemaking 98-12-013.

Despite the fact that NRDC's specific proposals were not implemented, we find that NRDC contributed substantially to the settlement of performance indicator issues adopted in D.99-05-030. As an initial matter, settlements usually require compromise, such that no single party's proposal wins. NRDC's analysis of these indicators provided the Commission with information necessary to judge the reasonableness of the settlement.

A party who actively contributes to settlements may be entitled to full compensation even though it does not succeed in convincing the other parties to adopt its position. In the present case, NRDC presented unique testimony, actively participated in settlement negotiations, and helped to establish that SDG&E's proposed environmental indicators should not be adopted. We therefore conclude that NRDC contributed substantially to the settlement adopted in D.99-05-030 and should be fully compensated for reasonable costs associated with its participation.

NRDC also seeks compensation for its participation in litigating the index issue. NRDC advocated the adoption of a revenue-per-customer index. The administrative law judge's (ALJ) Proposed Decision adopted NRDC's position. However, the Commission, although it agreed with NRDC's contention that a rate indexing approach creates an incentive for SDG&E to maximize per customer usage, decided not to adopt the revenue-per-customer approach advocated by NRDC. Instead, the Commission reasoned that other state energy efficiency programs would counter the disincentive to promote energy conservation created by the rate index proposed by SDG&E. Commissioner Duque dissented, agreeing with NRDC's proposal as set forth in the ALJ's proposed decision.

The Commission has recognized that an intervenor may make a substantial contribution when an ALJ's proposed decision adopts the party's position, but the Commission declines to adopt the party's position in full in its final decision. (See D.99-04-004, D.96-08-023.) This is such a case. It is apparent from the discussion in the ALJ's proposed decision that NRDC contributed substantially to the Commission's understanding of the rate indexing issue. That understanding is reflected in the Commission's adoption of NRDC's contention that rate indexing creates a disincentive for SDG&E to promote energy efficiency.

The fact that the Commission voted 2 to 1 to reject the NRDC's specific remedial proposal does not serve to cancel the substantial contribution that NRDC made toward the Commission's resolution of this issue.

Furthermore, NRDC coordinated with UCAN's experts to prevent duplication of testimony. UCAN's expert analyzed and prepared testimony on the operation and effect of the revenue-per-customer mechanism that both UCAN and NRDC supported, while NRDC's expert focused on the environmental consequences of the revenue-per-customer index versus the rate index proposed by SDG&E. In so doing, NRDC and UCAN efficiently utilized their respective resources to fully inform the Commission on this issue.

We therefore find that NRDC contribution to the Commission's adoption of an indexing mechanism entitles it to compensation. However, we reduce NRDC's compensation for its participation on this issue by 20% to account for the fact that the Commission ultimately rejected NRDC's policy proposal.⁷

Finally, NRDC claims to have contributed substantially to D.99-05-030 by convincing the Commission to include the phrase "and other regulatory goals" to the list of goals for the PBR mechanism. While we agree that this is a contribution, we simply do not find it to be substantial, and NRDC has not included any argument in its request to explain why it might be seen as such.

⁷ NRDC states that Epstein spent 109.7 hours on the indexing issue, Cavanagh spent 14.7 hours, and Miller spent 25.4 hours. Thus, the total hours claimed by Epstein, Cavanaugh, and Miller should be reduced by 22, 3, and 5 hours, respectively. This 20% reduction in hours will be reflected in the awards section. UCAN has reduced the compensation it seeks for those issues for which the Commission did not adopt UCAN's position in full, as we discuss below.

However, as NRDC has not listed any hours for work on this issue, we do not disallow any portion of its compensation request.

5. The Reasonableness of Requested Compensation

5.1 The Reasonableness of UCAN's request

UCAN requests compensation in the amount of \$251,108⁸ as follows:

Attorney Costs

Michael Shames	671.9 ⁹ hours x \$190 ¹⁰ /hr.	\$127,661
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Expert Costs

JBS Energy

William Marcus	201.3 ¹¹ hours x \$145/hr.	\$ 29,189
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Gayatri Schilberg	350.7 hours x \$105/hr.	36,824
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Jeffrey Nahigan	247 hours x \$85/hr.	20,995
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Ron Faubion	24.1 hours x \$50/hr.	1,205
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Other expenses (fax, travel, copy)		<u>432</u>
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JBS subtotal		\$ 88,645
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⁸ This amount differs from that stated on page 1 of UCAN's request for compensation. The discrepancy lies in an error UCAN made in totaling its expert fees. See attachment F of its request. Correction of the addition error increases the total compensation sought by \$8,005.

⁹ UCAN reduces by 20% the number of hours claimed for Shames work on issues in which UCAN's proposals were adopted in part, namely matters involving rate indexing, productivity, Z factors, GFCA and its proposal of two separate PBR mechanisms.

¹⁰ UCAN includes hours spent in travel and preparation of the compensation request 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.

¹¹ UCAN seeks compensation for only 70% of the hours Marcus spent working on issues for which the Commission did not adopt UCAN's position in full.

Exeter Associates

Marvin Kahn	6 hours x \$150/hr.	\$ 900
Pamela Cameron	99.5 hours x \$110/hr.	10,945
Karen Stemm	76 hours x \$45/hr.	3,420
Mary Sanders	12.5 hours x \$50/hr.	625
Other expenses (copy, fax, telephone)		<u>39</u>
		\$ 15,929
minus UCAN's proposed reduction of 10% for time spent on productivity issues		<u>-1,593</u>
Exeter subtotal		\$ 14,336

Strategy Integration

Eric Woychik ¹²	68.9 hours x \$145/hr.	<u>\$ 10,000</u>
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Expert Costs subtotal		\$112,981
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Other Costs

Travel		\$ 2,548
Lodging & per diem		\$ 3,188
Copying, postage, telephone		<u>\$ 4,730</u>
Total Other Costs		\$ 10,466

TOTAL		\$251,108
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5.1.1 Hours Claimed - UCAN

UCAN documented the claimed hours by presenting a daily breakdown of hours for Shames. The hourly breakdown presented reasonably supports UCAN's claim for total hours. This proceeding involved two settlements and litigation of a series of contested issues and spanned almost two years. We find that given the scope of the proceeding and UCAN's participation, Shames' total hours are reasonable.

¹² Woychik worked in excess of 68.9 hours. However, Strategic Integration agreed to perform services under a contract not to exceed \$10,000.

UCAN also submitted breakdowns of expert time by date and described the work performed by each expert.¹³ We recognize that UCAN required the use of experts because of the complex issues associated with designing a PBR mechanism. In conjunction with ORA, UCAN presented a comprehensive analysis of SDG&E's application. Because of the technical nature and the scope of the proceeding, and because UCAN's request is consistent with the estimate UCAN provided at the outset of the proceeding, we find the number of hours submitted for expert costs reasonable. We note further that UCAN used its resources efficiently by coordinating extensively with ORA to avoid duplication where possible. As ORA pointed out in its Response to UCAN's request for compensation, because of UCAN's significant participation the two groups were able to divide issues and thereby much more thoroughly analyze SDG&E's application.

5.1.2 Hourly Rates - UCAN

UCAN seeks an hourly rate for attorney Shames equal to that approved by the Commission in D.98-04-027. Likewise, the rates sought for experts Marcus, Gayatri Schilberg (Schilberg), Jeffrey Nahigian (Nahigian)

¹³ Although UCAN's request for compensation describes the contributions of the experts with whom it contracted and the hours worked by those individuals, it presents the information in a disjunct fashion that makes it difficult for the Commission to analyze the reasonableness of the hours spent by each person. For example, page 5 of the request for compensation describes contributions made by Marcus to resolution of the sharing mechanism issue and the proposal that billing and metering be treated separately. A breakdown of the issues Marcus worked on is provided on page 10. Attachment B breaks down Marcus' work by date, and Attachment F provides a total dollar amount for JBS energy. In the future, UCAN should identify and explain all of the information relevant to the compensation of an attorney or expert in a single section with a reference to supporting documentation.

and Eric Woychik (Woychik) were approved for those individuals in D.99-02-006, D.99-02-005, D.98-08-016, and D. 98-10-030, respectively.

Neither Pamela Cameron (Cameron) nor Marvin Kahn (Kahn) have previously participated in proceedings before the Commission.

Cameron has a Ph.D. in Economics from the University of Oklahoma and has been an economic consultant specializing in energy regulation for over twenty years. She has testified before numerous state regulatory commissions as an expert on electric and gas industry restructuring and participated in studies conducted for the Federal Energy Regulatory Commission (FERC) and the Department of Energy. UCAN seeks compensation for Cameron's work at a rate of \$110 per hour.

Kahn is a founding principal of Exeter Associates, and has a Ph.D. in Economics from Washington University in St. Louis. He has testified on issues relating to alternative regulatory mechanisms before over 20 commissions in the United States, and has recently served as a consultant to 10 state commissions on the application of alternative regulatory mechanisms. He has also taught economics at five universities, and served as a staff economist for the U.S. House of Representatives. UCAN requests that the Commission approve a rate of \$150 per hour for Kahn.

We find the rates requested for Cameron and Kahn reasonable, as they are on par with rates approved for persons with similar training and qualifications.

UCAN also requests compensation for Ron Faubion (Faubion) of JBS Energy for clerical work at a rate of \$50 per hour. We will not grant this request. We assume that professional fees include overhead and are set accordingly. (D.98-10-007, mimeo. at p. 5.)

UCAN's request for work done by Exeter Associates includes hours by Mary Sanders (Sanders) and Karen Stemm (Stemm). No description is given of the qualifications or tasks performed by these persons. In absence of a basis for the rate requested, we assume that this is clerical work and deny this request in the same basis discussed above.

5.1.3 Other Costs - UCAN

UCAN seeks \$10,466 in other costs. UCAN's request for compensation thoroughly itemizes its travel, copying and postage costs. A third of the amount requested reflects the costs associated with copying and serving UCAN's extensive testimony. The remaining amount is primarily for travel. Given the length and scope of this proceeding, we find UCAN's expenses reasonable.

5.2 The Reasonableness of NRDC's Request

NRDC seeks compensation in the amount of \$70,765 as follows:

Attorney Fees

Barry Epstein	233.5 hours x \$250/hr.	\$ 58,375
Ralph Cavanagh	14.7 hours x \$285/hr.	4,190
Attorney Fees Subtotal		\$ 62,565

Expert Costs

Peter Miller	44.4 hours x \$150/hr.	\$ 6,660
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Other Costs

Postage	\$ 239
Copy	599
Courier	73
Facsimile	53
Federal Express	38
Telephone	11

Travel	393
<u>Computer research</u>	<u>134</u>
Other Costs Subtotal	\$ 1,540
 TOTAL	 \$ 70,765

5.2.1 Hours Claimed by NRDC

NRDC in its request for compensation provided detailed records breaking down attorney and expert time by day and by issue. Given the significant effort that effective participation in this proceeding required, we find the hours expended by NRDC reasonable. NRDC's participation in this proceeding spanned more than one year, and required significant briefing, analysis and testimony on complex matters, participation in settlement negotiations and advocacy. NRDC's focus in the litigated portion of the proceeding was on one of the most contested issues: the indexing mechanism. NRDC's time records reflect that the organization spent no more time than appropriate on each issue. Furthermore, NRDC coordinated with UCAN and ORA to prevent duplicative effort wherever possible.

5.2.2 Hourly Rates - NRDC

NRDC seeks an increase in Peter Miller's hourly rate from \$135 to \$150 per hour. The \$135 per hour rate was set for work performed by Miller in 1992-1993. Since that time Miller's expertise and experience both in the energy regulation field and before the Commission have increased substantially. We therefore find the increase sought by NRDC to be reasonable.

NRDC also seeks an increase in Ralph Cavanagh's hourly rate. NRDC previously requested and received a rate of \$200 per hour for Cavanagh for work done in 1994. NRDC now submits that that rate was too low at the time, and far too low for the 1998 period for which NRDC currently seeks compensation. In support of its request, NRDC argues that Cavanagh has similar

experience to other attorneys who practice before the Commission and receive similar compensation, such as Michael Florio (Florio), who was awarded \$290 per hour for work done in 1998. However, although Cavanagh and Florio may have been practicing energy law for approximately the same number of years, Florio has more experience practicing before the Commission than does Cavanagh. Nevertheless, Cavanagh's diverse experience in the field of energy law does command a higher rate than that previously awarded by the Commission. Cavanagh is recognized as an authority on least-cost energy policy and energy efficiency. Since 1991 he has served as one of 15 members of the Energy Subcommittee of the President's Commission on Environmental Quality. He also sits on the Advisory Council of the Electric Power Research Institute and serves as Vice-Chair for the Center for Energy Efficiency and Renewable Technologies. In 1987, the National Academy of Sciences appointed Cavanagh to its Energy Engineering Board. Cavanagh has received numerous awards for his achievements in energy efficiency policy, and has taught as a visiting professor at Harvard, Yale and Boalt Hall Law Schools. He has advocated on behalf of NRDC and served as an expert witness on energy matters before numerous federal agencies and over a dozen state utility regulatory commissions. Given Cavanagh's considerable expertise and substantial experience in energy law and policy, we find the rate of \$285 per hour requested by NRDC to be reasonable.

NRDC seeks a rate of \$250 per hour for attorney Barry Epstein (Epstein). The Commission has not previously set a compensation rate for Epstein. Epstein has been practicing in the fields of energy, water and natural resources law for approximately 17 years representing state and local agencies, non-profit organizations and private clients. He also served as staff counsel for the California State Coastal Conservancy for four years. He has appeared numerous times before the Commission in various ratemaking and policy

proceedings over the past 12 years. We find that his substantial regulatory law experience qualifies him for a rate of \$250 per hour, as that is the rate that the Commission has awarded persons of similar experience and energy law expertise. (See D.99-02-005.)

NRDC asks that Epstein be compensated at his full rate for 13.9 hours spent in preparation of NRDC's compensation request. The Commission's general policy states that compensation requests are essentially bills for services that do not require a lawyer's skill to prepare and thus allows compensation at half an attorney's approved rate. We deviate from that policy only in exceptional circumstances, when the claim involves technical and legal analysis deserving of compensation at higher rates. (See, e.g., D.98-04-059.) Our policy of awarding compensation for request preparation at $\frac{1}{2}$ an attorney's regular rate recognizes that all compensation requests require an understanding of the legal standards that make a party eligible for an award. The full rate will be only granted for work on *exceptional* compensation requests that involve more complex legal analysis than that normally required. Thus, we decline to compensate Epstein at his full rate for preparing the compensation request and reduce Epstein's claimed hours by seven.

5.2.3 Other Costs

NRDC's other costs are thoroughly detailed in its request. We find most of the costs reasonable and appropriate given the length and complexity of this proceeding. Transportation expenses are unreasonably high, however, considering that the three individuals representing NRDC are located in San Francisco. As no itemization of travel expenses is provided to explain the unusually high cost, we reduce the amount by 50%.

6. Award

We award UCAN \$245,953, calculated below.

Attorney Costs

Michael Shames	671.9 hours x \$190/hr.	\$127,661
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Expert Costs

JBS Energy

William Marcus	201.3 hours x \$145/hr.	\$ 29,189
Gayatri Schilberg	350.7 hours x \$105/hr.	36,824
Jeffrey Nahigan	247 hours x \$85/hr.	20,995
Other expenses (fax, travel, copy)		<u>432</u>
JBS subtotal		\$ 87,440

Exeter Associates

Marvin Kahn	6 hours x \$150/hr.	\$ 900
Pamela Cameron	99.5 hours x \$110/hr.	10,945
Other expenses (copy, fax, telephone)		<u>39</u>
		\$ 11,884
minus 10% for time spent on productivity issues		<u>-1,498</u>
Exeter subtotal		\$ 10,386

Strategy Integration

Eric Woychik	68.9 hours x \$145/hr.	\$ 10,000
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Expert Costs subtotal		\$107,826
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Other Costs

Travel		\$ 2,548
Lodging & per diem		\$ 3,188
Copying, postage, telephone		<u>\$ 4,730</u>
Total Other Costs		\$ 10,466

TOTAL		\$245,953
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We award NRDC \$61,726, calculated below.

Attorney Fees

Barry Epstein	204.5 hours x \$250/hr.	\$ 51,125
Ralph Cavanagh	11.8 hours x \$285/hr.	<u>3,363</u>
Attorney Fees Subtotal		\$ 54,488

Expert Costs

Peter Miller	39.3 hours x \$150/hr.	\$ 5,895
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Other Costs

Postage		\$ 239
Copy		599
Courier		73
Facsimile		53
Federal Express		38
Telephone		11
Travel		197
<u>Computer research</u>		<u>134</u>
Other Costs Subtotal		\$ 1,343

TOTAL		\$ 61,726
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Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate), commencing August 1, 1999 for UCAN's award (the 75th day after UCAN filed its compensation request) and September 20, 1999 for NRDC's award (the 75th day after NRDC filed its compensation request) and continuing until the utility makes its full payment of the award.

As in all intervenor compensation decisions, we put UCAN and NRDC on notice that the Commission's Energy Division may audit UCAN's and/or NRDC's records related to this award. Thus, UCAN and NRDC must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The intervenors' 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.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. UCAN has made a timely request for compensation for its contribution to D.99-05-030 and D.98-12-038.

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. NRDC has made a timely request for compensation for its contribution to D.99-05-030.

4. NRDC 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.

5. UCAN contributed substantially to D.99-05-030 and D.98-12-038.

6. NRDC contributed substantially to D.99-05-030.

7. NRDC's requested hours spent on the indexing mechanism should be reduced 20% to account for the fact that the Commission ultimately rejected NRDC's policy proposal. UCAN has reduced its compensation request appropriately.

8. UCAN has requested hourly rates for attorney Michael Shames and experts William Marcus, Gayatri Schilberg, Jeffrey Nahigian and Eric Woychik that have already been approved by the Commission.

9. The hourly rates that UCAN has requested for Pamela Cameron and Marvin Kahn are reasonable, as they are on par with rates approved for persons with similar training and qualifications.

10. It is not reasonable to pay clerical fees. We assume that professional fees include overhead and are set accordingly. Therefore, we deny the request for compensation of clerical work of Ron Faubion.

11. Since no description is given of the qualifications or tasks performed by Mary Sanders and Karen Stemm, we assume this is clerical work and deny this request.

12. \$150 per hour is a reasonable compensation rate for Peter Miller's professional services considering his experience, effectiveness, and rates paid other experts.

13. \$285 per hour is a reasonable compensation rate for Ralph Cavanagh's professional services considering his experience, effectiveness, and rates paid other experts.

14. \$250 per hour is a reasonable compensation rate for Barry Epstein's professional services considering his experience, effectiveness, and rates paid other experts.

15. The miscellaneous costs incurred by UCAN are reasonable.

16. The miscellaneous costs incurred by NRDC as reduced herein are reasonable.

Conclusions of Law

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

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

3. UCAN should be awarded \$245,953 for its contribution to D.99-05-030 and D.98-12-038.

4. NRDC should be awarded \$61,726 for its contribution to D.99-05-030.

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

O R D E R

IT IS ORDERED that:

1. The Utility Consumers Action Network (UCAN) is awarded \$245,953 in compensation for its substantial contribution to Decision (D.) 99-05-030 and D.98-12-038.

2. Natural Resources Defense Council (NRDC) is awarded \$61,726 in compensation for its substantial contribution to Decisions 99-05-030.

3. San Diego Gas & Electric Company (SDG&E) shall pay UCAN \$245,953 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 1, 1999, and continuing until full payment is made.

4. SDG&E shall pay NRDC \$61,726 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 1, 1999, and continuing until full payment is made.

This order is effective today.

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

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners