

Decision **PROPOSED DECISION OF ALJ YACKNIN** (Mailed 4/8/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U902E) for Approval of a Settlement Agreement and Related Amendments to its Power Purchase Agreements with Otay Mesa Energy Center, LLC and Calpine Energy Services, LP.

Application 13-05-012
(Filed May 17, 2013)

DECISION GRANTING COMPENSATION TO THE UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 13-11-004

Claimant: Utility Consumers' Action Network (UCAN)	For contribution to Decision (D.) 13-11-004
Claimed: \$30,886.60	Awarded: \$8,771.60 (reduced 72%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Hallie Yacknin

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

This decision approves San Diego Gas & Electric Company's (SDG&E) settlement with Calpine Corporation and approves related amendments to its power purchase agreements (PPA) with Otay Mesa Energy Center, LLC (OMEC) and Calpine Energy Services, L.P. (CES or Calpine) to resolve an ongoing dispute concerning force majeure claims related to the OMEC PPA. The Settlement Agreement results from a dispute between SDG&E and OMEC regarding two extended outages at the OMEC facility due to a failure of the generator where CES was demanding payment under the force majeure clause in the PPA and SDG&E disputed the claim.

B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	August 15, 2013	Verified
2. Other Specified Date for NOI:		
3. Date NOI Filed:	September 12, 2013	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	D.10-05-013 in addition to the findings in the NOI filed in this docket. (See Comment 1.)	ALJ ruling in Application (A.) 13-05-012
6. Date of ALJ ruling:	May 10, 2010 and in this docket on October 10, 2013	October 10, 2013
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	D.10-05-013, in addition to the findings in the NOI filed in this docket (See Comment 1.)	ALJ ruling in A.13-05-012
10. Date of ALJ ruling:	May 10, 2010 and in this docket on October 10, 2013	October 10, 2013
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-11-004	D.13-11-004
14. Date of Issuance of Final Order or Decision:	November 20, 2013	November 20, 2013
15. File date of compensation request:		January 21, 2014
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	X		UCAN filed its Notice of Intent on September 12, 2013. On October 10, 2013 ALJ Yacknin ruled that the NOI demonstrated significant financial hardship, that UCAN has satisfied the eligibility requirements of the California Public Utilities Code Section 1804(a), and that UCAN has been determined to be eligible for compensation in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor’s Claimed Contribution	CPUC Discussion
<p>UCAN claims it substantially contributed to the issue of whether the settlement was reasonable by evaluating SDG&E’s contractual obligations under the contract, the proposed contract modifications for the Geysers PPA and the OMEC PPA, and the monetary cost of the settlement.</p>	<p>D.13-11-004 finds that the force majeure language in the OMEC PPA creates significant litigation risk and that the settlement is reasonable in light of the whole record, consistent with law and in the public interest.</p> <p>UCAN did not substantially contribute to the Commission’s consideration of SDG&E’s contractual obligations under the contract (including whether SDG&E has exercised due diligence to determine whether there had been a force majeure event), or otherwise inform the CPUC’s consideration of the extent of litigation risk associated with SDG&E’s contractual obligations. D.13-11-004 rejects UCAN’s argument and showing with respect to whether SDG&E had exercised due diligence and with respect to whether the settlement was consistent with law.</p> <p>However, UCAN did substantially contribute to the Commission’s consideration of the monetary value of the settlement. While UCAN’s presentation did not accurately demonstrate the settlement costs to ratepayers, nevertheless its efforts alerted the ALJ to SDG&E’s miscalculation and thereby substantially contributed to D.13-11-004’s determination that the settlement costs were higher than SDG&E claimed.</p>

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA)¹ a party to the proceeding?	No	Correct.
b. Were there other parties to the proceeding with positions similar to yours?	No	Correct.
c. If so, provide name of other parties:		
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: ORA was not a party to this proceeding.		Correct.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness of Costs

As discussed above, UCAN did not substantially contribute to the CPUC’s consideration of litigation risk associated with SDG&E’s obligations or to the CPUC’s consideration of the reasonableness of the contract language modifications. Accordingly, we disallow the cost of participation on those issues.

As discussed above, UCAN did substantially contribute to the CPUC’s consideration of the cost of the settlement as compared to litigation risk by alerting the CPUC to a possible error in SDG&E’s computation. Accordingly, the reasonable cost of participation on this issue is compensable.

UCAN claims a total of 45.25 hours for attorney time, 38 hours for expert witness time and 18.5 hours for travel and Comp Claim preparation. UCAN claims that 55% of its time was spent on the issue of the cost of the settlement as compared to the other issues. While UCAN’s timesheet for attorney Kelly does not make any allocation of time by issue, this allocation with respect to attorney Kelly’s time appears reasonable based on Kelly’s record participation. However, UCAN’s timesheet for expert witness Croyle indicates that only 0.5 out of the claimed 40 hours worked related to this issue. We disallow all other hours of Croyle’s work as unreasonable for not being related to the area of substantial contribution.

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Donald Kelly	2013	45.25	\$390	See attachments 2 & 3	\$17,647.50	25	\$230	\$5,750.00
David Croyle	2013	38	\$225	D.10-10-012	8,850.00	0.5	\$225	\$112.500
Subtotal: \$26,497.50						Subtotal: \$5,862.50		
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel, etc.):**								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Donald Kelly	2013	13.5	\$195	See attachments 2 & 3	\$2,632.50	13.5	\$115	1,552.50
Subtotal: \$29,130.00						Subtotal: \$1,552.50		
INTERVENOR COMPENSATION CLAIM PREPARATION**								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Donald Kelly	2014	5	\$195 is 50% of hourly rate	See attachments 2 & 3	\$975	5	\$115	\$575.00
Subtotal: \$30,105						Subtotal: \$575.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Donald Kelly Travel costs	Travel receipts, see attachment 4 & 5			\$781.60	\$781.60		
TOTAL REQUEST: \$30,886.60						TOTAL AWARD: \$ 8,771.60		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at 1/2 of preparer's normal hourly rate.</p>								

Attorney	Date Admitted to CA BAR ²	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Donald Kelly	December 5, 1990	151095	No.

C. CPUC Disallowances & Adjustments:

Item	Reason
Donald Kelly's hourly rate.	<p>Kelly has no previous work before the Commission for which he has received compensation. D.08-04-010 at 7 (Rates for New Representatives) states:</p> <p style="padding-left: 40px;">Intervenor representatives who previously have not appeared before the Commission must make a showing in the compensation request to justify their proposed hourly rate. The requested rate must be within the established range of rates for any given level of experience, and, consistent with the guidelines in D.05-11-031, must take into consideration the rates previously awarded other representatives with comparable training and experience, and performing similar services. (<i>See</i> § 1806.)</p> <p>We reject Claimant's comparison of Kelly's experience to that of The Utility Reform Network's representative Christine Mailloux, whose rate is set within the range of hourly rates for representatives with 13+ years of experience. Mailloux has 13 years of experience practicing before the Commission; Kelly has none. Although Kelly has 23 years of practice as an attorney, that experience (criminal defense, personal injury, juvenile dependency proceedings, professional licensing, and involuntary commitment) is not applicable to the issues before the Commission and the proceedings at hand. Finally, the quality of Kelly's work in this proceeding did not approach that of an experienced practitioner; for example, he did not demonstrate familiarity with Commission practice as might have been obtained by reviewing the Rules of Practice and Procedure. (<i>See</i>, e.g., Prehearing Conference Tr., August 15, 2013.)</p> <p>In recognition of Kelly's years of legal experience in other areas of practice and his current position as Executive Director of UCAN, we set his rate for work in 2013 at \$230, which is the mid-range of 2011 hourly rates for attorneys with three to four years of experience, with a Cost-of-Living Adjustment increase of 2.2% for two years (rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281.</p>
Disallowance of Attorney's fees.	Allowable hours for Kelly (attorney fees) are limited to 55% of claimed hours commensurate with percentage of hours allocated to the subject of "cost of settlement," which is the only area of substantial contribution.

² This information may be obtained at: <http://www.calbar.ca.gov>.

Disallowance of David Croyle’s hours.	Fees claimed for Croyle are disallowed. Croyle was not an expert witness in this proceeding given the limited nature of the computation, Croyle’s claimed hours are mostly uncompensable.
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PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?

Yes.

If so:

Party	Reason for Opposition	CPUC Disposition
SDG&E	No substantial contribution, unreasonable claimed attorney fees, costs related to Croyle are not eligible for compensation, UCAN fails to break down request by issue, excessive hourly fee requested, hours accrued by Kelly to draft motion to strike SDG&E’s reply comments on proposed decision are unreasonable.	See discussion above.

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?

No.

If not:

Party	CPUC Disposition
UCAN	No Legal or factual error shown.

FINDINGS OF FACT

1. Utility Consumers’ Action Network has made a substantial contribution to Decision 13-11-004.
2. The requested hourly rates for Utility Consumers’ Action Network’s representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$8,771.60.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Utility Consumers' Action Network is awarded \$8,771.60
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay Utility Consumers' Action Network the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 1, 2014, the 75th day after the filing of Utility Consumers' Action Network request, and continuing until full payment is made.
3. The comment period for today's decision is not waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1311004		
Proceeding(s):	A1305012		
Author:	ALJ Hallie Yacknin		
Payer(s):	San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network (UCAN)	1/21/2014	\$30,886.60	\$8,771.60	No	Changes in hourly rate(s); disallowance of attorney fees.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Donald	Kelly	Attorney	UCAN	\$390	2013	\$230
Donald	Kelly	Attorney	UCAN	\$390/\$195	2014	\$230/\$115
David	Croyle	Expert	UCAN	\$225	2013	\$225

(END OF APPENDIX)