

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval Pursuant to Public Utilities Code Section 851 to Lease Transfer Capability Rights to Citizens Energy Corporation.

Application 09-10-010
 (Filed October 9, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 11-05-048

Claimant: Utility Consumers' Action Network	For contribution to Decision 11-05-048
Claimed: \$45,241.20	Awarded: \$38,537.20
Assigned Commissioner: Michael Peevey	Assigned ALJ: Mark Wetzell
Claim Filed:	June 10, 2011

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Grants approval of lease of transfer capability rights from San Diego Gas & Electric Company (SDG&E) to Citizens Energy Corporation (Citizens).
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	PHC held 1/11/10 and 2/11/10
2. Other Specified Date for NOI:		
3. Date NOI Filed:	January 20, 2010	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	08-12-009	R.08-12-009

6. Date of ALJ ruling:	March 28, 2010	March 26, 2010
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:	N/A	
10. Date of ALJ ruling:	N/A	
11. Based on another CPUC determination (specify):	D.10-03-020	Correct (Decision (D.)10-03-020 issued March 12, 2010)
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-05-048	Correct
14. Date of Issuance of Final Decision:	May 27, 2011	May 31, 2011
15. File date of compensation request:	June 10, 2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
Most telling is the fact that the three projects that SDG&E claims involve Citizens have either been abandoned or will not increase transmission capacity in the Imperial Valley. First, the Green Path Southwest Project was a project of the Imperial Irrigation District that involved both a 500 kV substation (San Felipe) that is no longer planned by anyone and a route through Anza-Borrego State Park that has since been explicitly rejected by the Commission. Citizens has admitted this in its responses to UCAN’s data requests. (UCAN Opening Brief, at 14)	We note that Citizens’ intent to study the feasibility of transmission projects is not the same as a firm commitment to do so. We also note that three development projects that involve Citizens have been abandoned or will not increase transmission capacity in the Imperial Valley. Moreover, the extent of the “catalytic effect” that approval of the DCA would have on the propensity of both Citizens and other investors to participate in other transmission development opportunities is not readily measured. Among other things, it is unclear how likely Citizens’ participation in	Yes

	other projects might be if the DCA is not approved, and, therefore, what the incremental impact of the DCA might be. (Proposed Decision (PD), p. 13)	
Absent compelling evidence that future ROEs will be <i>significantly higher</i> for SDG&E than they are currently, which SDG&E and Citizens have failed to produce, there is no reason for the Commission to conclude that the that the rate stability that results from Citizens' 30-year levelized capital cost recovery method is a benefit to SDG&E ratepayers. The rate may be stable, but it is higher than what SDG&E ratepayers would pay in the absence of the DCA. If, indeed, stability carried an intrinsic benefit, then it would compel the Commission to establish rates based upon some portion of locked-in ROE for transmission projects. But it doesn't and probably shouldn't. Thus rate stability, in itself, cannot be viewed as a tangible ratepayer benefit. (UCAN Opening Brief, at 11-12)	UCAN claims that the current capital costs are arguably high on a long term basis because they reflect capital market conditions during the credit crisis of 2008. According to UCAN, this suggests that transmission rates could decline in the future in the absence of the DCA. UCAN submits that in order for the DCA's fixed rate provision to be a benefit for ratepayers, future returns on equity would have to exceed significantly the 11.35% return in effect under the current FERC TO3 Settlement Agreement or future debt costs would have to rise significantly above the debt level used in the SDG&E Representative Rate model... Although approval of the DCA would establish a potential for ratepayer gain by enabling them to pay less than SDG&E's capital cost in the event that cost rises, that possibility is offset by the DCA's risk of ratepayers having to pay more than SDG&E's cost in the event that cost falls. Accordingly, we do not find the rate stability provision of the DCA to be a ratepayer benefit. (PD, at 14-15)	Yes
Absent persuasive evidence that future SDG&E interest costs will be higher than current levels, and quantification showing the net expected value to ratepayers of avoiding those higher interest costs, ³⁹ the Commission should give no weight to SDG&E's claim that fixing interest rates for thirty years is a benefit. (UCAN Opening Brief, at 13)	Because this represents inter-temporal shifting of cost responsibility from future ratepayers to current ratepayers, rather than a net gain for ratepayers, we do not find this to be a public or ratepayer benefit. (PD, at 15)	Yes
SDG&E and Citizens have failed to produce, there is no reason for the Commission to conclude that the that the rate stability that results from Citizens' 30-year levelized capital cost recovery method is a benefit to SDG&E ratepayers. (UCAN Opening	If the DCA's provision for deferring capital cost recovery (compared to conventional ratemaking) provides a net benefit to ratepayers, and does not merely cause an inter-temporal shift of cost responsibility among ratepayers, it would be necessary to have a quantitative analysis	Yes

<p>Brief, at 11)</p>	<p>of the benefit. Under the circumstances, we are not able to conclude that the DCA’s deferred cost recovery provides a ratepayer benefit. (PD, p. 16)</p>	
<p>Even the high case may be understated, since it does not account for the increases in future inflation rates that Citizens claims are possible. Citizens admits that when it calculated the costs to SDG&E ratepayers of scenarios with increased future “money costs,” it did not adjust the inflation rates used to estimate Citizens’ expenses under the DCA.⁷⁹ Thus, in evaluating the impact of the DCA on SDG&E ratepayers, the Commission should use the high case estimate of \$22 million over 30 years. (UCAN Opening Brief, at 20)</p>	<p>Whether this is properly calculated as a 30-year cost of \$2.3 million to \$22 million, as UCAN says, or whether those estimates should be discounted by two-thirds to a create a net present value, as Citizens contends, ratepayers can expect to pay millions of dollars in additional costs if the DCA is approved and the lease option is exercised. In this respect the DCA is adverse to ratepayers. (PD, at 18)</p>	<p>Yes</p>
<p>First, the DCA does not provide any tangible benefits to SDG&E ratepayers. Citizens promises to give half of its after-tax profits to low-income residents of Imperial County, which is admirable, but Citizens will provide no assistance to SDG&E ratepayers. (UCAN Opening Brief, at 4)</p>	<p>SDG&E also contends that we should weigh the public interest benefits of the DCA against the harm to ratepayers. Specifically, in taking issue with UCAN’s position that future returns on equity would have to be significantly higher for SDG&E than they currently are in order for the rate stability feature of the DCA to have a public interest benefit.....We recognize that it would be appropriate to weigh any ratepayer benefits of the DCA against its demonstrable harm to ratepayers. Since the DCA’s benefits to Imperial County exclude ratepayers, only the DCA’s potential for enhanced competition and transmission development can be considered. We do not find that this intangible and unmeasured public benefit offsets the DCA’s harm to ratepayers. Accordingly, the application must be denied. (PD, at 19-20)</p>	<p>Yes</p>
	<p>After careful and thoughtful consideration of UCAN’s arguments concerning the potential higher costs to state ratepayers for transmission service, the APD finds that the benefits from the Citizens’ lease justify the approval of the A.09-10-010. (D.11-05-048)</p>	<p>Yes</p>

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

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Y	Yes
b. Were there other parties to the proceeding?	Y	Yes
c. If so, provide name of other parties: Citizens		Yes
d. Claimant’s description of how Claimant coordinated with DRA and other parties to avoid duplication or how Claimant’s participation supplemented, complemented, or contributed to that of another party: UCAN was the only protestant of the application. DRA and Citizens joined in support of the SDG&E application. All of the evidence relied upon by the ALJ in his proposed decision denying the application was based upon UCAN's discovery and testimony.		Yes

B. Additional Comments on Part II:

#	Claimant	CPUC	Comment
	X		<p>The Commission has found that an intervenor can “make a valuable contribution by performing a reasonableness review to test the prudence of [a utility’s] decisions, procedures and actions.” (D.06-03-001, slip op. at 12.) This compensation request closely mirrors the UCAN compensation request made in A.06-06-010 and A.02-12-027. In the compensation decision (D.05-08-014) related A.02-12-027, the Commission found: “UCAN made numerous significant recommendations that were all considered, in the two proposed decisions of ALJ Long and of the original assigned Commissioner, Carl Wood.” Similarly, in D. 06-03-001, the Commission wrote: D.05-08-037 did not adopt UCAN’s ratemaking recommendations. However, the proposed decision of ALJ Long did adopt most of UCAN’s recommendations..... As noted earlier, a participant may sometimes make a substantial contribution even when the participant’s positions are not adopted in the final determination of the issues considered in the proceeding... UCAN’s participation was critical to that examination, and we find that to that extent UCAN made a substantial contribution to D.05-08-037. (D.06-03-001, at 3-6)</p> <p>As is shown above, not only did the final decision consider UCAN’s evidence and findings, but the ALJ’s proposed decision adopted UCAN’s factual assertions and evidence as well as UCAN’s specific recommendations to deny the application. For these reasons, UCAN seek full compensation for all of its work in this application.</p>
	X		Commission rules require that applications submit hourly sheets

			<p>itemized by issue. However, in this case, there were only two issues; cost-benefit analysis of the lease terms (i.e. what were the benefits, what were the costs and how did they balance out) and the legal standard of review. So UCAN has presented billing sheets broken down by those two topics as there were no readily definable issues to identify other than the analysis conducted by Mr. Marcus on behalf of UCAN, all of which went to the scrutinizing of the alleged benefits claimed by proponents.</p> <p>UCAN did not prevail on the standard of review legal issue and has removed the 8 hrs spent researching and writing that issue from Mr. Shames' billing sheet. Mr. Marcus did not participate in any topic other than the cost-benefit issue.</p>
		X	<p>Many of the contentions put forward by UCAN's were adopted in the proposed decision but ultimately denied in D.11-05-048. We find that the rejected position nevertheless influenced the resolution of the proceeding, and D.11-05-048 was largely responsive to UCAN's positions and concerns even though it rejected the specific resolution proposed by the intervenor. We find that UCAN substantially contributed to D.11-05-048.</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

Explanation by Claimant of how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation	CPUC Verified
<p>While a pure balance of monetary savings for consumers against costs incurred cannot be established in this proceeding. UCAN's costs in this proceeding were reasonable in light of the significant contribution UCAN made in helping the ALJ reach his decision.</p> <p>As explained more fully above in Part II, UCAN provided a necessary expert witness to challenge the assertions made by SDG&E and Citizens. UCAN's evidence and argument are referenced in the ALJ's proposed decision showing that its participation was important to ensuring a thorough evaluation of the lease agreement. Given the fact that UCAN was the only opponent of the application, the contribution made by UCAN is more readily apparent.</p>	<p>With adjustments and reductions set forth in this decision, the requested costs are reasonable.</p>

B. Specific Claim*¹:

CLAIMED	CPUC AWARD
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¹ The intervenor 's claim was not broken down by years and fee types, as we require. . We have revised these tables to conform to the Commission's requirements that the specific claim should be broken down by years and fee type.

C. CPUC Disallowances & Adjustments:

#	Reason
Hourly Rates	<p>Hourly rates of \$330 for Michael Shames' work in 2009, 2010, and 2011 were adopted in D.11-03-028. We approve these rates.</p> <p>UCAN requests the rate of \$280 for David Marcus's work in 2009-2011, and relies on D.09-10-053 in support of the requested rate. D.09-10-053 adopted the rate of \$250 for this expert's work in 2008. No obligatory cost-of-leaving adjustment has been authorized since 2008.² UCAN does not provide a justification for the rate increase. Therefore, we award the rate of \$250 for Marcus's work in 2009 – 2011.</p>
Excessive Hours/Internal Duplication (Shames)	<p>UCAN's expert David Marcus spent 20.38 hours preparing his testimony, and Shames spent an additional 17.70 hours on Marcus' testimony. We find Shames' hours excessive, given the nature and scope of the testimony and the work allocation within UCAN. We reduce testimony-related hours recorded by Shames in 2010 by 3.80 hours.</p>
Internal Duplication (Marcus)	<p>UCAN's time records contain descriptions of Shames' and Marcus' participation in the same events. We analyzed these tasks for inefficiency and internal duplication, and found that some unnecessary duplication occurred in the December 24, 2009, and March 19 and April 29, 2010 communications. Based on the nature of these communications, we reduce Shames' hours in 2009 by 1.30, and Marcus's hours in 2010 by 1.70 hours.</p>
Excessive Hours (Shames)	<p>Shames' time records include 16.20 hours spent preparing the July 6, 2010 late-filed reply brief of approximately 4.5 pages. We find the hours related to the reply brief excessive³ and disallow 7.00 hours.</p>
Administrative Tasks	<p>Expert Marcus records the total of 2.25 hours spent on administrative tasks described as "prepare invoice". We find that this activity did not relate to UCAN's work on the proceeding and did not contribute to the decision. Although an hourly rate (\$140) Marcus requests for these tasks is lower than his normal expert rate, we do not allow additional award to recover for administrative overhead.⁴</p> <p>Shames' time records also include a number of clerical or administrative tasks, such as "prepare for service", "finalize for service", "file" or "send". Where these tasks are combined with substantive work (for example, "draft and serve"), we estimate that administrative tasks would take approximately 0.25 hour. Reductions: 2009 – 0.25; 2010 – 2.05; 2011 – 0.25.</p> <p>We remind UCAN that combining several specific tasks in one time record entry violates the provisions of Rule 17.4 (b) of the Commission Rules of Practice and Procedure. We request that UCAN's future claims comply with these requirements or</p>

² See, Resolutions ALJ-235, ALJ-247, and ALJ-267.

³ The hours include 3.00 hours spent reviewing timely filed reply briefs of other parties.

⁴ See, e.g., D.98-11-049, 1998 Cal. PUC LEXIS 805.

	we will consider applying larger reductions to the requested hours.
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PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
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B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?	Yes
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FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)11-05-048.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$ 38,537.20.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$ 38,537.20.
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 interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 24, 2011, the 75th day after the filing of Claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at Los Angeles, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1105048		
Proceeding(s):	A0910010		
Author:	ALJ Wetzell		
Payer(s):	San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	6/10/11	\$45,241.20	\$38,537.20	No	Adjusted hourly rates, inefficient effort (internal duplication); non-compensable (administrative) tasks; excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Advocate	Utility Consumers' Action Network	\$330	2009	\$330
Michael	Shames	Advocate	Utility Consumers' Action Network	\$330	2010	\$330
Michael	Shames	Advocate	Utility Consumers' Action Network	\$330	2011	\$330
David	Marcus	Expert	Utility Consumers' Action Network	\$280	2009	\$250
David	Marcus	Expert	Utility Consumers' Action Network	\$280	2010	\$250

(END OF APPENDIX)