

Decision 07-04-029 April 12, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC California (U 1001 C) for a Surcharge and a Balancing Account to Recover Undergrounding Costs in the City of San Diego.

Application 05-03-005
(Filed March 3, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION
TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 06-12-039**

This decision awards Utility Consumers' Action Network (UCAN) \$37,050.80 in compensation for its substantial contributions to Decision (D.) 06-12-039. This proceeding is closed.

I. Background

In January 2001, the City of San Diego (City) adopted its Underground Utilities Procedural Ordinance to provide for the expedited undergrounding of overhead utility wires within the city limits. The City's goal is to underground all currently overhead utility lines in 20 years. To accomplish this goal, the City must quadruple the current rate at which utility lines are undergrounded.

On March 3, 2005, Pacific Bell Telephone Company, doing business as SBC California (SBC)¹ filed its application for a surcharge and balancing account to track and recover its costs for the City undergrounding project. SBC estimated

¹ Now known as AT&T California, Inc.

that the total cost of the San Diego undergrounding project would be \$125 million and that the project would extend over 17 years. SBC requested an initial surcharge of \$0.94 per customer line per month, to be adjusted annually via the balancing account.

On April 7, 2005, the Utility Consumers' Action Network (UCAN) protested the application, arguing that undergrounding costs are before the Commission in the undergrounding rulemaking (Rulemaking 00-01-005). UCAN also found SBC's cost estimates to be "shockingly high" and suggested that the proposed cost recovery might violate the New Regulatory Framework under which the Commission regulates SBC's rates.

In D.06-12-039, we granted SBC's requested surcharge to recover the costs of undergrounding its aerial telephone lines in San Diego. We adopted SBC's proposed fixed amount rate design for the surcharge, but limited this authorization in light of our decision eliminating SBC's retail price regulation. As advocated by UCAN, Lifeline² customers were excluded from the surcharge and certain contract customers were included.

II. Requirements for Awards of Compensation

The Intervenor Compensation Program, enacted in Pub. Util. Code §§ 1801-1812,³ requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its

² The Commission's Lifeline program provides low-income customers with local residential service at reduced prices.

³ All statutory references are to the Public Utilities Code unless otherwise indicated.

ratepayers. In addition, an intervenor who seeks compensation for its contribution in Commission proceedings must file a request for compensation pursuant to Pub. Util. Code §§ 1801-1812. All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

III. Procedural Issues

After a prehearing conference on May 25, 2005, UCAN timely filed its NOI on June 21, 2005.

Section 1802(b) requires that an intervenor be a customer of a public utility. Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.” In this case, UCAN claims that it is a customer as defined in C, above.

On July 1, 2005, Administrative Law Judge (ALJ) Bushey ruled that UCAN is a customer pursuant to § 1802(b)(1)(C) and that UCAN met the financial hardship condition pursuant to § 1802(g) as it enjoyed a rebuttable presumption due to an ALJ finding on June 28, 2005, in A.05-02-019.

UCAN filed its request for compensation on December 21, 2006, within 60 days of D.06-12-039 being issued.⁴ In view of the above, we affirm the ALJ’s ruling and find that UCAN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

IV. Substantial Contribution

Under § 1804(c), when evaluating whether a customer made a substantial contribution to a proceeding, we consider whether the ALJ or Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations. If the customer’s contentions or recommendations paralleled those of another party, we consider whether the customer’s participation supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. As described in § 1802(i), the assessment of

whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. In this case, we adopted the settlement offered by the parties. The contributions by UCAN are outlined below.

UCAN states that it made a substantial contribution by successfully advocating for exempting Lifeline customers from the undergrounding surcharge. UCAN also notes that it sought a different rate design for the surcharge, i.e., percentage of intrastate revenue, rather than the adopted flat fee. As we noted in D.06-12-039, UCAN's advocated rate design was consistent with our precedent, which we would have adopted but for the intervening Uniform Regulatory Framework decision that eliminated the surcharge. Specifically in this proceeding, UCAN participated in the PHC, conducted discovery, distributed testimony, presented an expert witness, and filed briefs.

⁴ No party opposed the request.

⁵ See, D.98-04-059, 79 CPUC2d 628 at 653.

UCAN stated that it coordinated its presentation with the other parties as to not duplicate effort, and it declined to submit a reply brief or comments when to do so would have mirrored other parties' filings. No other party seeks compensation for work leading to D.06-12-039.

In view of the above, we find that UCAN made a substantial contribution to D.06-12-039, and that UCAN's presentation was not duplicative to that of other parties.

V. Reasonableness of Requested Compensation

UCAN requests \$37,050.80 for its participation in this proceeding, as follows:

Cost Summary				
	Year	Rate	Hours	Amount
M. Shames	2005	\$300	11.2	\$3,360.00
M. Shames	2006	\$310	72.4	\$22,444.00
S.Cratty	2006	\$225	4.5	\$1,012.50
T.Murray	2006	\$350	27.0	\$9,450.00
Costs				\$784.30
			Total:	\$37,050.80

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

A. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

UCAN documented its claimed hours by presenting a daily breakdown of the hours of its attorney and experts, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

B. Market Rate Standard

We next consider whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

UCAN seeks hourly rates of \$300 and \$310 for attorney Shames for work performed in 2005 and 2006.

We previously approved a rate of \$300 for Shames for 2005 in D.06-06-048, and use that rate here. In D.07-01-009, we found that a rate increase of 3% was reasonable for work performed in 2006 (above rates previously authorized for 2005), and adopt the requested rate of \$310 for Shames for 2006.

We previously adopted a rate of \$350 for Murray for 2005 in D.06-09-008, which is the rate requested by UCAN for the 2006 work as well. In that same decision, we adopted a 2005 hourly rate of \$210 for Cratty. UCAN requests an increase of 3% based on D.07-01-009 and rounds the result (\$216.30) up to \$225. We adopt UCAN's requested hourly rates for Murray and Cratty.

We also find that UCAN's miscellaneous costs of \$784.30, for which UCAN provided supporting detail, to be reasonable.

C. Productivity

In D.98-04-059, we directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

UCAN's participation was productive in that the impact of that participation far exceeded fees and other costs. All Lifeline customers in San Diego will be exempt from the undergrounding surcharge. This surcharge would have represented a substantial increase in these customers' monthly rate for local service. Thus, we find that UCAN's efforts have been productive.

VI. Award

As set forth in the table below, we award UCAN \$37,050.80.

Cost Summary				
	Year	Rate	Hours	Amount
M.Shames	2005	\$300	11.2	\$3,360.00
M.Shames	2006	\$310	72.4	\$22,444.00
S.Cratty	2006	\$225	4.5	\$1,012.50
T.Murray	2006	\$350	27.0	\$9,450.00
Costs				\$784.30
			Total:	\$37,050.80

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on February 27, 2007, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SBC as the regulated entity in this proceeding.

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. UCAN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant,

the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

VIII. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Maribeth Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. UCAN made a substantial contribution to D.06-12-039, as described herein.
3. UCAN requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$37,050.80.
5. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation.
2. UCAN should be awarded \$37,050.80 for its contribution to D.06-12-039.
3. This order should be effective today so that UCAN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) is awarded \$37,050.80 as compensation for its substantial contributions to Decision 06-12-039.
2. Within 30 days of the effective date of this decision, Pacific Bell Telephone Company, doing business as SBC California, shall pay UCAN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release H.15, beginning on March 6, 2007, the 75th day after UCAN filed its request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Application 05-03-005 is closed.

This order is effective today.

Dated April 12, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D0704029	Modifies Decision?
Contribution Decision(s):	D0612039	
Proceeding(s):	A0503005	
Author:	ALJ Bushey	
Payer(s):	Pacific Bell Telephone Company, doing business as SBC California, now known as AT&T	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
Utility Consumers' Action Network	12/21/06	\$37,050.80	\$37,050.80	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	Utility Consumers' Action Network	\$300	2005	\$300
Michael	Shames	Attorney	Utility Consumers' Action Network	\$310	2006	\$310
Terry	Murray	Expert	Utility Consumers' Action Network	\$350	2006	\$350
Scott	Cratty	Expert	Utility Consumers' Action Network	\$225	2006	\$225

(END OF APPENDIX)