Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design (U902E).	Application 07-01-047 (Filed January 31, 2007)

DECISION GRANTING INTERVENOR COMPENSATION TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-02-034

1. Summary

This decision awards Utility Consumers' Action Network (UCAN) $48,377.35 in compensation for its substantial contributions to Decision 08-02-034. This represents a decrease of $394.50 from the amount requested due to reductions in the hourly rates for two of UCAN's consultants, a 50% reduction of time for work on the notice of intent to claim compensation, and minor computational errors by UCAN. This proceeding remains open to address the proposal of San Diego Gas & Electric Company to phase out the rate cap imposed by Assembly Bill 1 of the 1st Extraordinary Session of 2001-2002.

2. Background

Decision (D.) 08-02-034 addressed the revenue allocation and rate design issues associated with the electric revenue requirement of San Diego Gas & Electric Company's (SDG&E) general rate case. SDG&E's revenue requirement was filed in and litigated in Application (A.) 06-12-009. The revenue allocation

and rate design issues were addressed in this proceeding, A.07-01-047, and resulted in D.08-02-034. In D.08-02-034, we adopted a settlement that resolved all of the revenue allocation and rate design issues in this proceeding, except for SDG&E's proposal to phase out the rate cap on certain residential customers that was imposed by Assembly Bill 1 of the 1st Extraordinary Session of 2001-2002 (AB1X).

This proceeding currently remains open to address SDG&E's proposal to phase out the rate cap.

3. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Public Utilities Code §§ 1801-1812,[1] requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party 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 ratepayers.

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), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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).)

[1] All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

3. The intervenor must 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) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be 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).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

3.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the dates the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on March 9, 2007. UCAN timely filed its NOI on March 14, 2007.

In its NOI, UCAN asserted financial hardship. On April 10, 2007, the Administrative Law Judge (ALJ) ruled that UCAN meets the financial hardship condition pursuant to § 1804(b)(1) through a rebuttable presumption of eligibility because the Commission found UCAN met this requirement in another proceeding within one year of the commencement of this proceeding. (ALJ Ruling, April 10, 2007.)

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. (§ 1802(b)(1)(A) through (C).) On April 10, 2007, the ALJ issued a ruling that found UCAN a customer pursuant to § 1802(b)(1)(C).

Regarding the timeliness of the request for compensation, UCAN filed its request for compensation on April 28, 2008, within 60 days of D.08-02-034 being issued. No party opposed the request. 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.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, we look at if the customer's contentions or recommendations paralleled those of another party, whether the customer's participation unnecessarily duplicated or materially 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. (§§ 1801.3(f) and 1802.5.)

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.[2]

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. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions UCAN made to the proceeding.

UCAN's participation in this proceeding addressed issues pertaining to marginal costs, revenue allocation, and rate design. UCAN participated in this proceeding through its attorney, Michael Shames, and through the testimony of its outside consultants at JBS Energy. UCAN contends that its primary contribution was in the form of expert testimony prepared by UCAN's consultant, William Marcus. Marcus' testimony presented an analysis of SDG&E's marginal distribution costs, in which he concluded that SDG&E's proposed residential class allocation was $71 million too high. Marcus' testimony also pointed out 11 mathematical errors in SDG&E's presentation which increased the residential allocation by a net of about $15 million. UCAN also provided testimony prepared by UCAN's consultant, Gayatri Schilberg,

[2] D.98-04-059, 79 CPUC2d 628 at 653.

who addressed SDG&E's proposed Peak Time Rebate (PTR) program for residential customers.

As noted in D.08-02-034 at pages 25 to 26, UCAN and the Division of Ratepayer Advocates (DRA) had proposed significantly lower allocations of the distribution and generation revenue requirements than what SDG&E had proposed. To derive its revenue allocation, UCAN proposed that marginal costs use the "new customer only" methodology, instead of the "rental" methodology that SDG&E used. As part of the settlement, and to avoid hearings on the marginal cost issues, the parties agreed to specific and separate allocation factors for the distribution and generation revenue requirements. Under the settlement, the revenue allocations to the residential and small commercial customers were significantly less than what SDG&E had proposed in its application.

Regarding the PTR program, UCAN and DRA had both raised the issue of the "free rider" problem, where some customers are able to take advantage of the rebate without any effort or expense on their part. The settlement adopted in D.08-02-034 incorporates a two-tier PTR credit to address the free rider problem that UCAN and DRA had identified. (D.08-02-034, p. 30.)

UCAN's participation and its arguments regarding marginal costs, revenue allocation, and rate design helped to shape the outcomes in the settlement that we adopted in D.08-02-034. We find that UCAN made a substantial contribution to D.08-02-034.

5. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor

to be eligible for full compensation if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

As noted above, UCAN and DRA addressed similar issues. However, UCAN contends that it sought to minimize duplication of effort, and points out that DRA's testimony did not contain as much detail as UCAN's analysis on the marginal costs and revenue allocation issues. We agree with UCAN that although DRA addressed some of the same issues that UCAN had raised, we should not reduce UCAN's compensation request on the basis of duplicative effort. UCAN's analysis on marginal costs and revenue allocation complemented the work of DRA and helped shape the outcomes agreed to in the settlement. Pursuant to § 1802.5, UCAN should be fully eligible for compensation because UCAN made a substantial contribution to D.08-02-034.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation request is reasonable.

6. Reasonableness of Requested Compensation

UCAN requests $48,771.85 for its participation in this proceeding. However due to two minor computational errors in UCAN's "Cost Summary" of its request, the correct amount of UCAN's request should be $48,770.75, calculated as follows:

Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2007-2008	74.20	$310.00	$23,002.00
JBS Energy - Marcus	2007	94.06	$235.00	$22,104.10
JBS Energy - Schilberg	2007	13.59	$185.00	$2,514.15

JBS Energy - Nahigian	2007	2.50	$175.00	$437.50
Subtotal:				**$48,057.75**

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2008	2.30	$310.00	$713.00
Subtotal Hourly Compensation:				**$48,770.75**
Expenses				0
Total Requested Compensation				**$48,770.75**

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.

6.1. 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, accompanied by a brief description of each activity. In addition, Attachment B of UCAN's request lists the monthly amounts billed to UCAN by JBS Energy and the amount of hours billed and the hourly rate of the JBS Energy consultants. Except as noted, the hourly breakdown, together with the description of the work performed and the monthly bill of JBS Energy, reasonably support the claim for the total request.

UCAN's entry for March 14, 2007 shows 1.5 hours of Shames' time for work on the drafting of UCAN's NOI to claim compensation and filing. This March 14, 2007 entry does not reflect a reduction of 50% of the time for work spent on the NOI.[3] Since we reduce the time spent on compensation related work by 50%, we will reduce UCAN's compensation request by $232.50.

6.2. Intervenor Hourly Rates

We next take into consideration 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 requests an hourly rate of $310 for Shames' work in this proceeding in 2007 and 2008. We previously approved this hourly rate for work performed in 2007 by Shames in D.07-09-015, and adopt that rate here.

UCAN requests hourly rates of $175, $235, and $185 for the 2007 work performed by the JBS Energy consultants Nahigian, Marcus, and Schilberg, respectively.

We previously approved a $235 hourly rate for work performed in 2007 by Marcus in D.08-05-033, and adopt that rate here.

For the 2007 hourly rates of Nahigian and Schilberg, we previously approved a $165 hourly rate for Nahigian for work performed in 2007 in D.08-01-038 and a $175 hourly rate for Schilberg for work performed in 2007 in D.08-04-014 and in D.07-12-026. UCAN's request has not justified why the 2007

[3] Compare this to UCAN's April 28, 2008 entry which reflects a 50% reduction for preparing the compensation request. In this case, UCAN reduced its time, rather than its rate by 50%. Our calculations in this case follow this approach; however, we would prefer in future claims if UCAN were to show its full hours and apply the customary 50% reduction to its rate for travel and compensation matters.

hourly rates for Nahigian and Schilberg should be higher. Accordingly, we will reduce UCAN's compensation request by an additional $160.90 using the 2007 hourly rates that we previously approved for Nahigian and Schilberg as follows:

Attorney/Staff	Year	Hours	Approved 2007 Hourly Rates	Total
JBS Energy - Nahigian	2007	2.50	$165.00	$412.50
JBS Energy - Schilberg	2007	13.59	$175.00	$2378.25
Reduction to Compensation Request:				**$160.90**

6.3. Direct Expenses

UCAN states in its request that its "miscellaneous costs were sufficiently nominal that it does not seek compensation for any copying and telephone costs in this Request."

7. Productivity

D.98-04-059 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 its participation. This showing assists us in determining the overall reasonableness of the request.

UCAN's participation was productive in that the impact of UCAN's participation far exceeds its compensation request. As noted earlier, UCAN's position on marginal costs and revenue allocation differed from SDG&E's position by millions of dollars. The settlement adopted in D.08-02-034 reflects those differences and the revenue allocation to residential and small business customers were significantly less than what SDG&E requested in its application. Thus, we find that UCAN's efforts have been productive.

8. Award

As described by the adjustments discussed above, and as set forth in the table below, we award UCAN $48,377.35:

Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2007-2008	72.70	$310.00	$22,537.00
JBS Energy – Marcus	2007	94.06	$235.00	$22,104.10
JBS Energy - Schilberg	2007	13.59	$175.00	$2,378.25
JBS Energy - Nahigian	2007	2.50	$165.00	$412.50
Work on Proceeding Total:				**$47,431.85**

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2007-2008	3.05	$310.00	$945.50
NOI and Compensation Request Total:				**$945.50**

CALCULATION OF FINAL AWARD

Work on Proceeding	**$47,431.85**
NOI and Compensation Request Preparation	$945.50
TOTAL AWARD	**$48,377.35**

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

July 12, 2008, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made.

This award of compensation to UCAN is to be paid by SDG&E 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 rates, fees paid to consultants, and any other costs for which compensation was claimed.

9. Waiver of Comment Period

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

10. Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and John S. Wong 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.08-02-034 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 $48,377.35.

5. The appendix to this decision summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.08-02-034.

2. UCAN should be awarded $48,377.35 for its contribution to D.08-02-034.

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. The Utility Consumers' Action Network (UCAN) is awarded $48,377.35 as compensation for its substantial contributions to Decision 08-02-034.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company 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 Federal Reserve Statistical Release H.15, beginning July 12, 2008, the 75th day after the filing date of UCAN's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision? No**
Contribution Decision(s):	D0802034	
Proceeding(s):	A0701047	
Author:	ALJ Wong	
Payer(s):	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/ Diallowance
Utility Consumers' Action Network (UCAN)	4/28/08	$48,771.85	$48,377.35	No	Hourly rate reduction; reduction for notice of intent work; computation error.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	UCAN	$310.00	2007, 2008	$310.00
William	Marcus	Economist	JBS Energy	$235.00	2007	$235.00
Jeff	Nahigian		JBS Energy	$175.00	2007	$165.00
Gayatri	Schilberg	Economist	JBS Energy	$185.00	2007	$175.00

(END OF APPENDIX)