Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY CONSUMERS ACTION NETWORK FOR ITS SUBSTANTIAL CONTRIBUTION TO DECISION 04-12-048

1. Summary

This decision awards the Utility Consumers Action Network (UCAN) $72,109.33 in compensation for its contribution to Decision (D.) 04-12-048.

2. Background

The Commission issued D.04-12-048, adopting Long-Term Procurement Plans (LTPP) for the largest three investor-owned electric utilities (IOU), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). Principles judging the preparation and adoption of the LTPPs derive from Assembly Bill (AB) 57,[1] the Energy Action Plan (EAP),[2] D.03-12-062,[3] D.04-01-050,[4] and the Assigned

[1] AB 57 (Stats. 2002, Ch. 850, § 3. Effective September 24, 2004). AB 57 added Section 454.5 to the Public Utilities Code.

[2] The EAP was issued jointly on May 8, 2003, by the California Public Utilities Commission, the California Energy Commission (CEC) and the California Consumer Power and Conservation Financing Authority. A copy of the complete EAP is available for downloading on the Commission's Website at www.cpuc.ca.gov.

Commissioner Ruling/Scoping Memo (ACR) issued by Commission President Peevey on June 16, 2004, as amended June 29, 2004.[5] These guidance principles also were used by the utilities to draft and design their LTPPs.

D.04-12-048 gave the three IOUs authorization to plan for and procure the resources necessary to provide reliable service to their customer loads for 2005 through 2014. The decision must work in concert, to coordinate and incorporate Commission and legislative efforts, with other proceedings, in particular Community Choice Aggregation (CCA),[6] Demand Response (DR),[7] Distributed Generation (DG),[8] Energy Efficiency,[9] Avoided Cost and Long-term Policy for Expiring Qualifying Facility Contracts,[10] RPS,[11] Transmission Assessment[12] and

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[3] D.03-12-062, issued in Rulemaking (R.) 01-10-024, gave the IOUs procurement authority (often referred to as "AB 57 authority") for 2004, including the authority to sign contracts for up to five years' duration for 2005 procurement needs.

[4] D.04-01-050 gave continued procurement authority to the IOUs through the first three quarters of 2005, with authority to sign contracts for up to one year's duration for 2005 procurement needs. D.04-01-050 closed R.01-10-024, and established the parameters for R.04-04-003.

[5] In addition, a June 29, 2004, Administrative Law Judge (ALJ) Ruling augmented the June 16, 2004, ACR and directed the utilities to include in their LTPPs responses to specific questions regarding global climate change issues.

[6] R.03-10-003.

[7] R.02-06-001.

[8] R.04-03-017.

[9] R.01-08-028.

[10] R.04-04-025.

[11] R.04-04-026.

[12] R.04-01-026.

Transmission Planning.[13] Earlier, the Commission issued D.04-10-035, the Resource Adequacy decision; and D.04-07-028, regarding transmission constraints, in this docket.

R.04-04-003 instructed the utilities to incorporate the Commission's policy direction from these other proceedings into their LTPPs and to inform the Commission how the utilities intended to meet the established goals from the other proceedings through their procurement decisions between now and 2014. The utilities also were directed to prioritize their resource procurements following the "loading order" of preferred resources established in the EAP. The "loading order" framework identified those demand-side resources as "preferred" that work toward optimizing energy conservation and resource efficiency while reducing per capita demand. The identified loading order is: energy efficiency and demand response; renewables (including renewable DG); clean fossil-fueled DG; and lastly clean fossil-fueled central-station generation.

Recognizing that utilities face many demands and resource uncertainties in planning for the next ten years, the ACR instructed the utilities to prepare three supply/demand scenarios: high-, medium-, and low-incremental need. The medium-load plan is to be the preferred resource plan of each utility that meets the needs identified in its Alternative Base Case load-forecast scenario, or its CEC Integrated Energy Policy Report base case scenario. The high-load plan should be a reasonable estimate of the burden of service under high future growth load and an optimistic view of economic growth. The low-load is based on reasonable assumptions about progress in conservation, pessimistic assumptions about the

[13] R.00-01-001.

economy and generous assumptions about the development of core/non-core and CCA. The utilities were instructed to use these scenarios to accommodate the many possible outcomes and employ a risk management approach of future commitments by incorporating long-, mid-, and shorter-term contracts.

As mentioned above, the utilities filed their respective LTPPs on July 9, 2004. Intervenor testimony was received on August 6, 2004, from over 20 parties and rebuttals received from over 10 parties on August 20, 2004.

The four weeks of evidentiary hearings included extensive cross-examination of utility and intervenor witnesses with 128 documents received in to evidence. Post hearing briefs were received on October 18, 2004, and reply briefs were received on November 1, 2004. The proposed decision (PD) was mailed on November 16, 2004. On November 30, 2004, SCE filed a timely request for Final Oral Argument (FOA) before the whole Commission and FOA was held on December 13, 2004.

UCAN participated actively in the proceeding, keeping its focus on a discrete set of issues pertaining to SDG&E's LTPP. In particular, UCAN brought to the Commission's attention that SDG&E's LTPP relied heavily on transmission and central generation, rather than exploring more expansive options. In particular, UCAN argued that SDG&E's LTPP discounted the addition of resources that would comport with the EAP loading order, such as demand reduction, DG, DR, and renewable resources by filling up the headroom with traditional resources. In addition, UCAN urged the Commission to order SDG&E to re-file its LTPP with directives to address load pockets, deliverability, congestion, reliability-must-run (R-M-R) and must-take resources.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, 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 proceeding. 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) (or in special circumstances, at other appropriate times that we specify). (Section 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 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. (Section 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Sections 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. (Sections 1802(h), 1803(a).)
6. 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. (Section 1806.)

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

4. Procedural Issues

PHCs in this matter were held on April 30, and August 25, 2004. UCAN timely filed its NOI on September 8, 2004, within 30 days of the second PHC. UCAN addressed its anticipated scope, estimated costs of participation and customer status in the NOI. On September 16, 2004, the assigned ALJ ruled that UCAN was a customer pursuant to § 1802(b)(1)(C) (an organization authorized pursuant to its bylaws to represent customers). UCAN has a long history of representing customers in Commission proceedings, and meets the significant financial hardship condition here through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because UCAN met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated April 2, 2003, in Application 02-12-027).

UCAN timely filed a request for compensation on December 30, 2004, within 60 days of D.04-12-048 being issued. In the request, UCAN described its substantial contributions to the decision and provided a detailed list of related services and expenses. In view of the above, we find that UCAN has met all the procedural requirements to claim compensation.

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* Section 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* Sections

1802(h), 1802.5.) As described in Section 1802(h), 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.[14]

UCAN states that it made substantial contributions to D.04-12-048, and that its participation contributed to the following outcomes:

- The Commission's decision not to approve SDG&E's request for a 500 kV transmission line;
- The decision's directive that SDG&E pursue the EAP loading order when it makes resource additions and that SDG&E underscore the importance of adhering to the direction provided in D.04-07-028 regarding transmission constraints and power purchases;
- The decision's agreement with UCAN that the issue of integration of generation and transmission planning was not fully explored in the proceeding, including the nature of the local customer load, transmission and distribution constraints, and existing generation resources;
- The decision's statement that transmission plans were insufficient to meet Commission goals and that future plans should include conceptual scenarios that illustrate the impact of potential generator location;

[14] D.98-04-059, 79 CPUC 2d, 628 at 653.

- The requirement that the IOUs provide updated gas price forecasts when subsequent long-term procurement plans are filed with the Commission;
- The decision's statement that utilities are expected to continue to explore and find new ways to meet demand-response goals and whether or not to approve specific proposed programs in R.02-06-001;
- The decision's statement that the IOUs should incorporate the most recently adopted energy savings goals into their LTPPs;
- The decision's statement that RPS should be fully incorporated into long-term planning, placing renewable energy development at the center of the IOUs' resource planning efforts; and
- The conditional compliance of SDG&E's procurement plans and LTPP upon the refiling of complying versions of these documents.

We find that UCAN achieved a high level of success on the issues it raised. The proceeding and the Commission's final decision benefited from UCAN's participation, and UCAN has made a substantial contribution to the proceeding on each of the above issues.

6. Reasonableness of Requested Compensation

We now must determine whether UCAN's compensation request of $72,109.33 is reasonable. A summary of UCAN's compensation request is as follows:

Attorney's and Expert's Fees:

Name	**Hours**	**Rate**	**Request**
Michael Shames Attorney, UCAN	94.2	$250/hr.	$23,550.00
Eric Woychik, expert Strategy Integration, LLC	257.8	$185/hr.	$47,693.00
Total Attorney's and Expert's Fees			**$71,243.00**

Expenses

Travel:

Air	$228.00		
Van and taxi	$ 46.00		
Airport parking		$ 40.00	
Per diem for 2 nights		$300.00	
Total Travel Costs			$614.00

Copying and Postage:

Photocopying		$163.20	
Postage/overnight mail		$ 57.00	
Telephone/teleconferencing		$ 32.13	
Total Miscellaneous Costs			$252.33
Total Expenses			**$ 866.33**
TOTAL COMPENSATION REQUEST			**$72,109.33**

The components of this request must constitute reasonable fees and costs of the intervenor's preparation for and participation in a proceeding that resulted

in a substantial contribution. Thus, only those fees and costs associated with the intervenor's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

A. Productive Participation

D.98-04-059 directed intervenors to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of an intervenor'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 states that although it is difficult to quantify the ratepayer savings directly attributable to the Commission's decision in this proceeding, the improved planning that will result from this process and UCAN's participation will save the IOUs and their ratepayers the cost of wasted and unnecessary investment expenditures. We agree that to the extent ratepayers do not have to pay for unnecessary or wasted investments, ratepayers will benefit monetarily. We also agree that these programs, improved through UCAN's participation, have other social benefits which, though hard to quantify, are substantial. We therefore find that UCAN's participation has been productive.

B. Reasonableness of Hours Claimed/Avoidance of Duplication

Next, we must assess whether the hours claimed for UCAN's efforts that resulted in a substantial contribution to D.04-12-048 are reasonable.

UCAN documented its claimed hours by presenting a daily breakdown of the hours of its attorney and expert, along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. Given the scope of UCAN's participation and the work products prepared, the number of claimed hours is reasonable. Since we find that UCAN's efforts made

a substantial contribution to the decision, we need not exclude from UCAN's award any compensation for specific issues.

In addition, we believe that UCAN made reasonable efforts to avoid duplication of effort with other parties, especially those promoting similar goals. To the extent that UCAN overlapped the showings of other parties, we find that UCAN's showing supplemented or complemented those other showings. (*See* § 1802.5.)

C. Reasonableness of Hourly Rates

Finally, in determining compensation, we must determine whether the requested hourly rates for UCAN's attorney and expert who participated in the proceeding are reasonable. In making this determination, we consider the market rates for similar services from comparably qualified persons.

UCAN has requested an hourly rate of $250 for attorney Michael Shames for work performed in 2003 and 2004. We previously awarded Shames this hourly rate in D.05-02-005, and we adopt that rate here.

UCAN requested an hourly rate of $185 for Eric Woychik of Strategy Integration for work performed in 2004. In D.05-08-014, we approved an hourly rate of $175 for Woychik's work performed in 2003. Pursuant to Resolution ALJ-185, an increase of 8% is deemed reasonable for 2004 work, above rates authorized for 2003. The requested rate of $185/hour is reasonable and we adopt it here.

D. Reasonableness of UCAN's Claimed Expenses

The itemized direct expenses of $866.33 submitted by UCAN include costs for travel, a per diem for overnight lodging and meals, parking, photocopying, postage and overnight mail, and telephone and teleconferencing charges. The cost breakdown submitted by UCAN shows these expenses to be commensurate

with the work performed. We find these expenses reasonable, and approve them here.

7. Award

As set forth in the table below, we award UCAN intervenor compensation in the amount of $72,109.33:

Attorney's and Expert's Fees:

Name	Hours	Rate	Request
Michael Shames Attorney, UCAN	94.2	$250/hr.	$23,550.00
Eric Woychik, expert Strategy Integration, LLC	257.8	$185/hr.	$47,693.00
Total Attorney's and Expert's Fees			**$71,243.00**

Expenses

Travel (Shames):

Air	$228.00		
Van and taxi	$ 46.00		
Airport parking		$ 40.00	
Per diem for 2 nights		$300.00	
Total Travel Costs			$614.00

Copying and Postage:

Photocopying		$163.20	
Postage/overnight mail		$ 57.00	
Telephone/teleconferencing		$ 32.13	
Total Miscellaneous Costs			$252.33
Total Expenses			**$ 866.33**
TOTAL COMPENSATION AWARDED			**$72,109.33**

Consistent with previous Commission decisions, we will order that interest be paid on the award amount[15] commencing on March 15, 2005, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this 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, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN represents consumers, customers or subscribers of various public utilities regulated by the Commission.

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[15] At the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

2. The individual economic interests of UCAN members are small compared to the costs incurred in effectively participating in these proceedings.

3. UCAN filed a timely NOI on September 8, 2004.

4. UCAN timely filed its request for compensation on December 30, 2004.

5. UCAN provided the Commission with all other information necessary to be eligible to claim compensation in its NOI and request for compensation.

6. No objection was made to UCAN's NOI or claim for compensation.

7. UCAN made a substantial contribution to D.04-12-048, as set forth in the foregoing opinion.

8. UCAN requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.

9. UCAN requested reasonable compensation for related business expenses.

10. The total of these reasonable rates and fees is $72,109.33.

11. The Appendix to the opinion summarizes today's award.

Conclusions of Law

1. UCAN was found eligible for compensation.

2. 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 fees and expenses incurred in making a substantial contribution to D.04-12-048.

3. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Utility Consumers Action Network (UCAN) is awarded $72,109.33 as compensation for its substantial contribution to Decision 04-12-048.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) shall pay this award to UCAN.

3. PG&E, SCE, and SDG&E shall also pay interest on the award beginning March 15, 2005, the 75th day after UCAN filed its compensation request, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

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

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**
Contribution Decision(s):	D0412048	
Proceeding(s):	R0404003	
Author:	ALJ Brown	
Payer(s):	San Diego Gas & Electric Company, Pacific Gas and Electric Company, Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers Action Network	12/30/04	$72,109.33	$72,109.33	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	$250	2003-04	$250
Eric	Woychik	Policy expert	Utility Consumers Action Network	$185	2004	$185

(END OF APPENDIX)