

Decision 10-05-013 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Expedited Authorization to Change Residential Electric Rates Effective January 1, 2010, as Permitted by Newly Enacted Public Utilities Code Section 739.9. (U39E)

Application 09-10-013
(Filed October 14, 2009)

And Related Matters.

Application 09-10-014
Application 09-10-015

DECISION AWARDING INTERVENOR COMPENSATION TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 09-12-048

Claimant: Utility Consumers' Action Network	For contribution to D.09-12-048
Claimed (\$): \$ 4,226.75	Awarded (\$): \$ 3,814.45 (reduced 10%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Thomas R. Pulsifer

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: D.09-12-048 authorizes rate adjustments pursuant to Public Utilities Code Section 739.9 for Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric Company. The decision authorized the utilities to implement residential rate changes effective January 1, 2010 under provisions of Senate Bill (SB) 695. The Commission authorized a rate increase for Tiers 1 and 2 of only 3% effective January 1, 2010, with a corresponding reduction to the higher-usage tiers, to result in no change in the overall amount of revenues collected from residential customers. The Commission also requires that the utilities, in subsequent annual requests for rate adjustments pursuant to SB 695, utilize the most recently published figures for the prior year preceding the effective date of the requested rate change. The utilities are authorized to propose future annual changes to residential rates pursuant to this statute by filing Tier 2 advice letters no later than November 15th of the year prior to when the rates are to change.

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:	None	Yes
2. Other Specified Date for NOI:	See Section C-1 comment below	Yes
3. Date NOI Filed:	January 12, 2010	Yes
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:	A.09-10-013	Yes
6. Date of ALJ ruling:	See Section C-2 comment below	Yes
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:	A.09-10-013	Yes
10. Date of ALJ ruling:	See Section C-3 comment below	Yes
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.09-12-048	Yes
14. Date of Issuance of Final Decision:	December 17, 2009	Yes
15. File date of compensation request:	February 12, 2010	Yes
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I (use line reference # as appropriate):

#	Claimant	CPUC	Comment
1.		X	ALJ Pulsifer advised potential claimants of intervenor compensation in A.09-10-013, et al. to make simultaneous filings of the Notice of Intent to claim compensation along with the request for intervenor compensation, pursuant to Section 1804 (a)(1) of the Public Utilities Code. Section 1804(a)(1) provides that where no pre-hearing conference is scheduled, that the Commission determine the procedure to be used for intervenors requesting compensation. UCAN timely filed both documents here.
2.		X	Section 1802(b)(1) of the Public Utilities Code 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).) In its compensation request here, UCAN asserts that it is category 3 customer as defined in §1802(b). We find that UCAN is a customer pursuant to § 1802(b)(1)(C) and is determined to be eligible to receive intervenor compensation under the standard of significant financial hardship.
3.		X	Pursuant to Rule 1804(a)(2)(B) UCAN includes its showing of significant financial hardship here in its compensation request. UCAN asserts in its NOI that the economic interest of the individual members of the organization is small in comparison to the costs of effective participation in the proceeding. In these consolidated proceedings, UCAN’s costs were \$4,226.75, substantially outweighing the benefits to the individual members it represents. UCAN’s protest and participation in this proceeding concerned that the proper interpretation of a statutory provision, which while beneficial only has a minimal financial impact on its individual members. Accordingly, these economic interests are small relative to the costs of participation. It is unlikely that UCAN’s members will see financial benefits that exceed the costs of UCAN’s intervention. We find that UCAN is a customer as defined in Public Utilities Code Section 1802(b) and has made the requisite showing of significant financial hardship, and is determined to be eligible to claim intervenor compensation in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. On November 5, 2009 UCAN filed a protest to SDG&E Application for authorization to change residential electric rates effective January 1, 2010, as permitted by Public Utilities Code Section 739.9. UCAN protested the utility’s intent to decrease rates for Tiers 3 and 4 as contravene to the statutory requirements that rates be determined while observing the principle that conservation is desirable, asserted that non-Care Tiers 1 and 2 increases would be properly rated at the 3% minimum increase and not the 5% maximum increase as requested by the utility, and objected to the use of advice letters for subsequent modification given the inaccurate adjustments in the utility’s application.</p>	<p>A.09-10-013 <i>et seq.</i></p>	<p>Yes</p>
<p>2. On November 20, 2009, the assigned Commissioner in a scoping ruling determined the scope for the proceeding. The Commissioner adopted 4 issues to be resolved in the proceeding. Two of the issues were raised in UCAN’s protest alone: (1) Whether residential rates for electrical usage in excess of 130% of base line should decrease when Tier 1 and 2 increase? And (2) whether the authorized increase in Tier 1 and 2 rates should be for 3% or 5%, and what principles should apply in determining the appropriate “cost-of-living adjustment” (COLA) to be used in calculating the applicable rate adjustments?</p>	<p>A.09-10-013 <i>et seq.</i></p>	<p>Yes</p>

<p>3. The Commission accepted the COLA argument in UCAN’s protest stating that “The COLA appropriately used to calculate the rate adjustment for Tiers 1 and 2 within the range authorized by SB 695 supports only a 3% increase effective January 1, 2010. The applicants’ 5% proposed increase is based on a wrong interpretation of the prior-year CPI change that applies and thus the 5% increase should not be adopted. (D.09-12-048 pp 14-17 and p. 25 Conclusion of Law 4)</p>	<p>D. 09-12-048 pp. 14-17 Section 5.3 and p. 25 Conclusion of Law 4)</p>	<p>Yes</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was DRA a party to the proceeding? (Y/N)</p>	<p>Yes</p>	<p>Yes</p>
<p>b. Were there other parties to the proceeding? (Y/N)</p>	<p>Yes</p>	<p>Yes</p>
<p>c. If so, provide name of other parties: The three IOUs, DRA, TURN and UCAN were the only active parties.</p>		<p>Yes</p>
<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how it’s participation supplemented, complemented, or contributed to that of another party: UCAN raised two concerns in its protest not addressed by any other parties to the proceeding but determined relevant to the scoping of the application and its approval. Specifically, whether residential rates for electrical usage in excess of 130% of base line should decrease when Tier 1 and 2 increase? And whether the authorized increase in Tier 1 and 2 rates should be for 3% or 5%, and what principles should apply in determining the appropriate “cost-of-living adjustment” (COLA) to be used in calculating the applicable rate adjustments?</p>		<p>Yes</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Concise explanation as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)	CPUC Verified
<p>UCAN’s participation in this proceeding provides several benefits for current and future energy ratepayers. UCAN’s participation ensured that the Commission considered whether the rate adjustments made pursuant to Section 739.7 and 739.9 did not contravene any Commission policy or statute in favor of encouraging energy conservation (D.09-12-048 p. 13). UCAN’s participation also helped ensure the Commission considered the appropriate interpretation of what time period represents the prior year. The Commission agreed with UCAN, not the utilities that the appropriate applicable CPI for the prior year is the change from third quarter of 2008 to the third quarter of 2009 (<i>Id.</i> p. 16). Additionally, in an effort to economize UCAN had Mike Scott prepare and draft the bulk of the legal documentation as his claimed hourly rate is significantly lower than Michael Shames’ claimed hourly rate thereby reducing UCAN’s overall claimed costs.</p>	<p>Yes</p>

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Scott	2009	9.29	155	<i>See Section D p. 7</i>	1,426	2009	6.54	155	1,013.70
M. Shames	2009	7.90	330	D.09-11-026	2,607	2009	7.90	330	2,607.00
Subtotal: \$4033.00						Subtotal: \$3,620.70			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
M. Scott	2010	2.50	77.50	ALJ-235	193.75	2010	2.50	77.50	193.75
Subtotal: \$193.75						Subtotal: \$193.75			
TOTAL REQUEST \$: 4,226.75						TOTAL AWARD \$: 3,814.45			

*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.

**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.

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. CARE’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. 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.

C. Attachments or Comments Documenting Specific Claim (not attached to final Decision):

Attachment #	Description/Comment
1	Certificate of Service
2	Michael Shames timesheet
3	Mike Scott's qualification/justification for hourly rate
4	Mike Scott's timesheet
5	UCAN Statement of Financial Hardship

D. CPUC Adoptions and Disallowances:

Item #	Reason
2009 rate for Mike Scott	Scott has no previously established rate set for Commission work. Scott worked on public utilities related issues for UCAN from May 2007 to August 2008 as a legal intern. In addition, Scott worked as a legal intern at the Federal Communications Commission in the Enforcement Bureau, Office of the Bureau Chief from August 2008 to December 2008. Scott has worked as an attorney in the District of Columbia since June 2009. The rate request for Scott of \$155 per hour falls within the guidelines for attorneys with 0-2 years of experience as outlined in D.08-04-010. The rate request is reasonable given Scott's relative training and experience and we adopt this rate here.
2009-Scott	On 11/5, Scott logs .25 hrs for the "filing of UCAN's protest". We do not compensate intervenors for clerical work as it is subsumed in the fees for attorneys. We disallow this time.
We admonish UCAN here, as we do all intervenors, that when multiple participants are utilized to perform the same task, that it must provide the Commission with sufficient information to ensure that their work is not duplicative. While UCAN may find it necessary to have several individuals involved in the same work efforts and we recognize its efforts to participate economically, without a clear explanation of how these efforts differ from one another, we see no reason why ratepayers should pay for the training of new participants and/or inefficient efforts.	
2009-Scott	On 11/10 Scott logs 1 hr for "reviewing DRA and Turn Protests". We disallow this time as being duplicative of M. Shames's efforts which have been compensated.
2009-Scott	On 11/16 Scott logs 1.3 hours for "reviewing utilities replies to protests and mtg with M. Shames re: strategy". We allow .30 hrs for the internal meeting, but disallow 1 hr of Scott's time as being duplicative of M. Shames's efforts which have been compensated.
2009-Scott	On 11/23 Scott logs .50 hrs for "reviewing the Commission Scoping Ruling". We disallow this time as being duplicative of M. Shames's efforts which have been compensated.

PART IV: OPPOSITIONS AND COMMENTS
Within 30 days after service of this claim, Commission Staff
or any other party may file a response to the claim (see § 1804(c))

A. Opposition: Did any party oppose the claim (Y/N)?

No

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

Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.) 09-12-048.
2. The claimed fees and costs 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 \$3,814.45.
4. The Appendix to today's decision summarizes the award.

CONCLUSION OF LAW

1. The claim satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$3,814.45.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall each pay claimant their respective shares of the award. We direct Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company to allocate payment responsibility among themselves, based on their relative proportionate share of California-jurisdictional electric revenues for the 2009 calendar year, the year in which the proceeding was primarily litigated. 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 April 28, 2010, 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. The consolidated Applications (A.) 09-10-013, A.09-10-014 and A.09-10-015 are closed.
5. This decision is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1005013	Modifies Decision? No
Contribution Decision(s):	D0912048	
Proceeding(s):	A0910013, A0910014 and A0910015	
Author:	ALJ Thomas R. Pulsifer	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
Utility Consumers' Action Network	02-12-10	\$4,226.75	\$3,814.45	No	clerical task, duplication of effort

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	\$155	2009	\$155
Mike	Scott	Attorney	Utility Consumers' Action Network	\$330	2009	\$330
Mike	Scott	Attorney	Utility Consumers' Action Network	\$330	2010	\$330

(END OF APPENDIX)