

Decision 10-12-061 December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U-902-E) for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design.

Application 05-03-015
(Filed March 15, 2005)

ORDER GRANTING REHEARING OF DECISION (D.) 09-04-031 TO RECONSIDER THE DETERMINATION OF WHETHER TO AWARD COMPENSATION FOR THE SMART GRID STUDY, MODIFYING D.09-04-031 BASED UPON RECONSIDERATION, AND DISMISSING THE APPLICATION FOR REHEARING AS MOOT

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 09-04-031 (or “Decision”) filed by the Utility Consumers’ Action Network (“UCAN”).

In Application (A.) 05-03-015, San Diego Gas & Electric Company (“SDG&E”) sought approval of its Advanced Metering Infrastructure (“AMI”) Project to replace nearly all 1.4 million electric and gas meters in its territory that are not already equipped with automated metering infrastructure.¹ In D.07-04-043 (“AMI Decision”),² the Commission approved a settlement agreement between SDG&E, the Division of Ratepayer Advocates (“DRA”), and UCAN to allow \$572 million for SDG&E’s proposed AMI Project for the years 2007-2011.

¹ SDG&E’s large commercial and industrial customers already have automated meter capability.

² *Application of San Diego Gas & Electric Company (U-902-E) for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design (“AMI Decision”)*[D.07-04-043] (2007) __ Cal.P.U.C.3d __, 2007 Cal. PUC LEXIS 275.

Subsequently, UCAN filed a request for award of compensation seeking \$466,309 for its contribution to the *AMI Decision*.³ The request was comprised of \$255,309 in costs for attorney, consultant, expert witness, and miscellaneous direct costs, plus \$211,000 (later adjusted to \$206,000) for its half of the cost of the San Diego Smart Grid Study Final Report (“Smart Grid Study” or “Study”) that was submitted in the proceeding.⁴ The Study was jointly sponsored and paid for by UCAN and SDG&E.

In November 2008, the Administrative Law Judge (“ALJ”) issued a Proposed Decision which would have awarded UCAN’s request with only minor reductions reflecting the adjusted cost of the Study and certain hourly rate adjustments.⁵ In March 2009, an Alternate Proposed Decision was issued which proposed to reduce the award by \$211,000 (adjusted \$206,000) for UCAN’s portion of the Study costs.⁶ In D.09-04-031, the Commission approved the Alternate Proposed Decision.

UCAN filed a timely application for rehearing challenging the D.09-04-031 on the grounds that the Commission’s determination to disallow its share of the Study costs is not supported by the facts or the evidentiary record. No responses were filed.

We have carefully considered the arguments raised in the application for rehearing, and are of the opinion that reconsideration is warranted concerning whether UCAN should be awarded its costs for the Smart Grid Study. Therefore, we grant rehearing of this specific issue. For the reasons explained below, we have reconsidered our determination based on the existing record for the proceeding, and have determined

³ Utility Consumers’ Action Network Request for Award of Compensation, dated April 26, 2007, at p. 1, and Attachments A-E.

⁴ The Smart Grid Study was submitted as Attachment 4 to Exhibit (“Exh.”) 64 (SDG&E/DRA/UCAN). Attachment 4 is entitled San Diego Smart Grid Study Final Report, dated October 2006, prepared by the University of San Diego.

⁵ The ALJ’s Proposed Decision would have awarded UCAN \$460,324 of its original request for \$466,309. (See *Application of San Diego Gas & Electric Company for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design* (“ALJ Proposed Decision”, filed November 10, 2008).)

⁶ Alternate Proposed Decision of Commissioner Bohn, dated March 17, 2009.

that awarding the costs for the Smart Grid Study is warranted. Therefore, we will modify D.09-04-031 to award UCAN its portion of the Smart Grid Study costs. We dismiss the application for rehearing of D.09-04-031, as modified, since the modification makes moot UCAN's challenge.

II. DISCUSSION

A. Relevant Criteria for Awarding Compensation

Public Utilities Code section 1801 *et seq.*, provides the statutory criteria for evaluating intervenor requests for compensation. By ruling dated July 20, 2005, the ALJ found that UCAN satisfied the preliminary eligibility requirements with respect to customer status and significant financial hardship.⁷

The remaining requirement for eligibility is that an intervenor make a substantial contribution to the proceeding. Specifically section 1802 provides:

(i) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has *adopted in whole or in part one or more of the factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer*. Where the customer's participation has resulted in a substantial contribution, *even if the decision adopts that customer's contention or recommendations only in part*, the commission may award...compensation for all reasonable...costs incurred by the customer in preparing or presenting that contention or recommendation.

(Pub. Util. Code, §§ 1802(i) (emphasis added).)

In enacting the intervenor compensation requirements, it was the Legislature's intent that we administer the requirements in a manner to encourage effective and efficient participation of all groups that have a stake in the utility regulation

⁷ See Administrative Law Judge's Ruling Regarding Notice of Intent to Claim Compensation, dated July 20, 2005, at p. 6, para. 1, 2.

process.⁸ Nevertheless, in doing so we have a reasonable amount of discretion in determining whether to award compensation.⁹

Here, we did find that UCAN made a substantial contribution to the *AMI Decision*. (D.09-04-031, at p. 13 [Finding of Fact Number 2].) However, in disallowing UCAN's costs for preparation of the Study we questioned the extent to which the Study itself assisted our decisionmaking process and contributed to the recommendations adopted by the underlying *AMI Decision*.

In making such determinations, we generally apply statutory criteria as well as considerations and standards we have enumerated in various decisions. As applied here, the most commonly applied criteria would support an award of compensation for the Study if:

- Issues addressed by the Study were within the scope of the proceeding, as identified by the Scoping Memo.¹⁰
- Issues addressed by the Study led to adoption of one or more of the factual contentions, legal contentions, policy recommendations, or procedural recommendations proposed by UCAN as a result of the Study.¹¹
- The Study did not duplicate the contribution of another party in an unproductive or unnecessary way. If the Study paralleled the contribution of any other party, it

⁸ Pub. Util. Code, § 1801.3, subd. (b).

⁹ See e.g., Pub. Util. Code, § 1801.3, subd. (d) [Compensation awarded “as determined by the commission in its orders and decisions], & §1802, subd. (i) [“Substantial contribution” means ‘in the judgment of the commission’].

¹⁰ See e.g., *Re Commission's Intervenor Compensation Program* [D.98-04-059] (1998) 79 Cal.P.U.C.3d 628, 640-649, modified and overruled in part by *In the Matter of the Joint Application of GTE Corporation (“GTE”) and Bell Atlantic Corporation (“Bell Atlantic”) to Transfer Control of GTE's California Utility Subsidiaries to Bell Atlantic, Which Will Occur Indirectly as a Result of GTE's Merger With Bell Atlantic* [D.03-03-031] (2003) __ Cal.P.U.C.3d __, 2003 Cal. PUC LEXIS 204. See also Rule 7.3 of the Commission's Rules of Practice and Procedure. (Cal. Code of Regs., tit. 20, § 7.3.)

¹¹ See D.09-04-031, at pp 4-5, relying on Pub. Util. Code, § 1802, subd. (i). Where a customer's contribution is otherwise substantial, compensation may be awarded even if a decision adopts only part of a customer's recommendation. (Pub. Util. Code, § 1802(i).)

must complement, supplement or contribute to that presentation or to the development of a fuller record that assisted the Commission.¹²

In applying these criteria, we must hold an intervenor to certain standards in order to ensure that we have satisfied our own obligation to justify decisions on behalf of the public. At the same time, we often interpret the statutes fairly liberally. We will often find sufficient merit where information or analysis was provided that the ALJ or Commission relied on in its deliberations.¹³ We have also awarded compensation where the customer meets what has been referred to as a “productivity standard.” That standard would require that to be compensable, we must find that the Study led to more efficient and competent participation by UCAN, that it was effective as shown by adoption of one or more of its recommendations, and/or it was productive in that the cost was reasonable in relation to the benefits realized through its use.¹⁴

B. The Record in this Proceeding

The following discussion compares the relevant compensation eligibility criteria to the evidentiary record and Commission findings.

1. The record shows that the issues addressed by the Study were within the scope of the proceeding.

As set forth above, to be compensable the issues addressed by the Study must have been within the scope of the proceeding, as determined by the Scoping Memo.¹⁵ The Scoping Memo for this proceeding set the scope as follows:

¹² Pub. Util. Code, § 1801.3(f). See also D.09-04-031, at pp. 4-5, relying on Pub. Util. Code, §§ 1802(i), 1802.5.

¹³ *Id.*

¹⁴ *Re Commission’s Intervenor Compensation Program* [D.98-04-059], *supra*, 79 Cal.P.U.C.3d at p. 650. The Commission has also sometimes looked to whether the participation could be considered useful or unique. (*Order Instituting Rulemaking on the Commission’s Intervenor Compensation Program; Order Instituting Investigation on the Commission’s Intervenor Compensation Program* (“2000 Intervenor Comp. OIR/OII Decision”) [D.00-02-044] (2000) __ Cal.PUC.3d __, at p. 12 (slip op.), 2000 Cal. PUC LEXIS 197. See also *Re Commission’s Intervenor Compensation Program* [D.98-04-059], *supra*, 79 Cal.P.U.C.3d at pp. 649-654.)

¹⁵ See *ante*, fn. 10.

- To determine whether SDG&E's proposed AMI system would meet the Commission established functionality criteria;
- To determine what system and technology choices would be the correct choices for ratepayers;
- To determine whether the proposed investment would be cost-effective and provide sufficient operational and demand response benefits to ratepayers; and to determine whether SDG&E presented a serious and effective plan for integrating the AMI investment into its operating systems.¹⁶

In rejecting UCAN's costs, we were of the view that the Study may have been beyond this scope, and overly broad. (D.09-04-031, at pp. 10-11.) For example, there is little to nothing in the Study which directly pertains to SDG&E's actual AMI proposal or the metering technology itself. In most instances we would consider such a shortcoming to be a fatal flaw. Parties should not assume it is acceptable to engage in somewhat broad studies that may be only tangentially related to specific issues in a proceeding. Cost recovery in such instances is far from guaranteed.

That said, upon review we are persuaded that on whole, the Study did reasonably limit its scope to the San Diego region, as well as the following guiding issues: (1) the relevant economic and regulatory climate to support Smart Grid activities; (2) functionality via the technologies necessary to implement an effective Smart Grid; and (3) cost-effectiveness/cost-benefit analyses.¹⁷

To that end, the Study did provide analysis consistent with the functionality,¹⁸ cost-effectiveness,¹⁹ and implementation issues identified in the Scoping Memo.²⁰ Those issues were reasonably related to the issues identified in this proceeding

¹⁶ Assigned Commissioner's Ruling Establishing Scope, Schedule, and Procedures for Proceeding, dated July 1, 2005, at pp. 3-5. Similarly, in describing SDG&E's burden of proof, the AMI Decision stated that the utility's burden was to show that its AMI proposal would meet the Commission's functionality criteria and be cost-effective. (D.07-04-043, at p. 16.)

¹⁷ Smart Grid Study, at p. 1.

¹⁸ Smart Grid Study, at pp. 29-40.

¹⁹ Smart Grid Study, at pp. 41-67.

²⁰ Smart Grid Study, at pp. 67-72.

for consideration. Accordingly, we find that the Study did adequately meet this criteria for an award of compensation.

2. The record shows that one or more recommendations stemming from the Study were adopted by the *AMI Decision*.

As set forth above, we would generally consider the Study to be compensable if the issues or information it contained led to adoption of one or more of UCAN's recommendations, if it provided some information or analysis that was relied on, if it assisted in resolving issues, and/or if it led to changes in SDG&E's AMI proposal that in turn affected the approved project activities.

We initially denied compensation stating that few of the issues and recommendations addressed in the Study were adopted in the *AMI Decision*. (D.09-04-031, at p. 6.)

UCAN contends we erred by disregarding the significance of its adopted recommendations. UCAN points out that the settlement agreement adopted by the *AMI Decision* incorporated UCAN's recommendations concerning two pivotal issues in the proceeding, cost-effectiveness and functionality. In particular, UCAN points to its recommendations for creation of a Technical Advisory Panel ("TAP"), and addition of a Home Area Network ("HAN"), which it claims emanated from the Study. (Rhg. App., at pp. 4-5.)

It is true the Study contained certain technology options, etc. that were not ultimately adopted. And of the issues litigated in the proceeding UCAN made several recommendations that the *AMI Decision* did not ultimately adopt. Nevertheless, upon review we agree that our judgment may have been somewhat harsh.

UCAN is correct that the adopted settlement agreement required SDG&E to modify its AMI proposal to, among other things, establish the TAP,²¹ and incorporate two added functionality requirements: a HAN communication system, and remote

²¹ D.07-04-043, at p. 15. See also Exh. 63 (SDG&E/DRA/UCAN), at p. 7, and Attachment A.

connect/disconnect functionalities.²² While we see nothing in the record that would clearly link the TAP recommendation to the Study, the record does show that the HAN and remote connect/disconnect functionalities could be linked to the Study.²³

We also take note of our own statements acknowledging the benefit of these functionality additions, and the value of the Study generally in assisting our deliberations and resolution of issues. (See e.g., D.09-04-031, at p. 6, fn. 3; D.07-04-043, at pp. 76, 82-83.) We are persuaded that in this case, the number of adopted recommendations was not as important as the significance of their impact. Thus, we will find that the Study adequately satisfied the criteria for an award of compensation.

3. The record shows that the Study was not duplicative, and added to the development of a fuller record.

We raised no concern that the Study was duplicative of the information presented by any other party. Accordingly, we would generally look to whether the Study contributed to a fuller record, and assisted in our evaluation of the issues. As noted above, given that we did have a favorable view of the Study and we acknowledged its overall contribution, we will find in this case that it did meaningfully add to the record in a manner contemplated for an award of compensation.

4. The record shows that the Study appeared to meet the productivity standard.

We do not always apply the productivity standard in evaluating requests for intervenor compensation. However, it may be relevant to do so here to consider whether the Study enabled UCAN to participate more effectively, whether it was the basis for one

²² D.07-04-043, at pp. 13, 95 [Ordering Paragraph 1]. See also Exh. 63 (SDG&E/DRA/UCAN), at p. 3.

²³ See e.g., Exh. 64 (SDG&E/DRA/UCAN), Attachment 4, at pp.8, 30 - 31, 44 - 45; see also Exh. 202 (UCAN/Shames), at pp. 8 - 9. Despite the fact our Decision generally attributed HAN and the remote connect/disconnect capability to UCAN, it is relevant to note that these technologies were also recommended in comments DRA submitted in the proceeding. (Exh. 123, Comments of The Division of Ratepayer Advocates on the Response of San Diego Gas & Electric Company to the Ruling of Administrative Law Judge Gamson, dated January 16, 2007, at pp. 10-17.)

or more adopted recommendations, and whether the cost was reasonable in relation to the benefits realized from its use.

Arguably, whether UCAN's participation was more effective due to the Study is something of a subjective determination. However, we would agree that it did appear to be the platform on which UCAN based its participation. Based on our adoption of two of UCAN's recommendations, it is also reasonable to conclude that the Study itself was reasonably effective.

While we should carefully scrutinize expenditures for studies such as this, the overall the cost in this instance was not disproportionate in relation to the benefits we expect to receive from recommendations which were attributed to UCAN and the Study. UCAN's portion of the Study cost was \$206,000. We found between \$40 million and \$50 million in added net benefits that were attributed to the HAN and remote connect/disconnect functionalities incorporated in the settlement. (D.07-04-043, at p. 85.) The parties also represented that these capabilities should provide meaningful KWh savings.²⁴ We did not take these factors into consideration when reaching our original determination regarding compensation. Accordingly, we will find that the Study reasonably satisfied our productivity standard.

III. CONCLUSION

Upon reconsideration and review, we find that the existing record in this proceeding is adequate to reevaluate the matter without the need for further evidentiary hearings. Accordingly, we will immediately modify D.09-04-031 as set forth below in the ordering paragraphs. The application for rehearing of D.09-04-031, as modified, is dismissed because the modifications make moot the challenge raised in the application for rehearing.

²⁴ Exh. 64 (SDG&E/DRA/UCAN), at p. 6.

THEREFORE, IT IS ORDERED that:

1. Rehearing is granted on the issue of whether costs for the Smart Grid Study should be awarded to UCAN.

2. Upon reconsideration of the issue, as discussed herein, D.09-04-031 is modified as follows:

a. The first sentence on page 1 of D.09-04-031 is modified to read:
“This decision awards the Utility Consumer’s Action Network \$460,324 in compensation for its substantial contributions to decision 07-04-043 in the second phase of this proceeding, a decrease of \$5,976 from the amount originally requested.”

b. D.09-04-031 should be modified on page 6 to delete the last sentence of the first paragraph that begins on page 5.

c. D.09-04-031 should be modified on page 6 to delete the last sentence of the first new paragraph (including footnote 3), and the following should be inserted:

“Two of UCAN’s recommendations for addressing these concerns which stemmed from the Smart Grid study, were incorporated in the settlement and approved by the Commission in D.07-04-043. These were the requirements that SDG&E modify its proposal to include the use of a Home Area Network chip as well as the remote connect/disconnect capability. In addition, we note that SDG&E represented that the study was useful to the Technical Advisory Panel that was formed as a result of the settlement”

d. D.09-04-031, page 10, should be modified to delete the last paragraph, extending through the end of Section 5.3 on page 11, and the following should be inserted:

“We turn to the reasonableness of UCAN’s costs of the study (half of the total costs of the study). SDG&E states that two competitive bids were obtained and the lowest bid was selected. SDG&E also states that the billing rates in the bids were compared to a similar consulting engagement between SDG&E and its consultant on a comparable project. The Smart Grid project working group, comprised of SDG&E,

USD and UCAN, jointly determined the scope of the work and found the proposed rates to be reasonable.

It is difficult to determine whether UCAN's costs for the study were reasonable because we have no precedent for this type or arrangement. However, while submission of a joint study by opposing parties is unusual, is not too dissimilar in function from joint exhibits, joint stipulations or other joint products routinely submitted by opposing parties in Commission proceedings. Such submissions are a normal part of the Commission's process, though most do and should serve to narrow the scope of disputed issues rather than expand areas of consideration.

We do not encourage intervenors to pursue such studies as a matter of course, in the hopes that the results may be deemed sufficiently related to the issues in a proceeding to warrant cost recovery. Parties are reminded that cost recovery of such joint collaborations will be carefully scrutinized and cost recovery is not guaranteed. However, we also note that had the Smart Grid study been performed solely by SDG&E, we would have allowed cost recovery from ratepayers only to the extent the Study provided ratepayer benefit and the costs were reasonably incurred. UCAN's participation causes us to review the reasonableness of UCAN's costs. We have found that the study assisted in our review and led to the adoption of specific recommendations. Accordingly, it was part of UCAN's substantial contribution to the proceeding. We generally grant full compensation for an eligible party's efforts when there is a substantial contribution unless there is a demonstrable overlap, unreasonable hourly rates, errors in the filing or other clear rationale for reductions. The facts here do not support such reductions. Therefore, we find UCAN's request for \$206,000 in compensation for the Smart Grid study reasonable."

- e. The first sentence in Section 6 on page 12 of D.09-04-031 should be modified to read:

"With the \$5,000 modification for the adjusted Smart Grid study costs and hourly rate adjustments, we award UCAN \$460,324."

- f. Finding of Fact Number 4 on page 13 is modified to read:
 “The total of the reasonable compensation is \$460,324.”
- g. Conclusion of Law Number 2 on page 13 of D.09-04-031 is modified to read:
 “UCAN should be awarded \$460,324 for its contribution to D.07-04-043.”
- h. Appendix A of D.09-04-031 should be modified under the category of Intervenor Information, Amount of Award, to reflect \$460,324.
- i. Ordering Paragraph Number 1 on page 13 should be modified to read:
 “The Utility Consumer’s Action Network (UCAN) is awarded \$460,324 as compensation for its substantial contributions to Decision 07-04-043.”

- 3. Rehearing of D.09-04-031, as modified, is dismissed as moot.
- 4. This proceeding, Application (A.) 05-03-015 is closed.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
 President
 DIAN M. GRUENEICH
 NANCY E. RYAN
 Commissioners

I dissent.

/s/ JOHN A. BOHN
 Commissioner

I dissent.

/s/ TIMOTHY ALAN SIMON
 Commissioner