

Decision 11-03-023 March 10, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission’s Own Motion to Revise the Simplified Registration Process for Non dominant Interexchange Carriers Established by Decision 97-06-107.

Rulemaking 09-07-009  
(Filed July 9, 2009)

**DECISION AWARDING INTERVENOR COMPENSATION  
TO UTILITY CONSUMERS’ ACTION NETWORK  
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-09-017**

|  |   |
|--|---|
| <b>Claimant: Utility Consumers’ Action Network</b> | <b>For contribution to Decision (D.)10-09-017</b> |
| <b>Claimed: \$5,396.60</b>                         | <b>Awarded: \$4,426 (reduced 18%)</b>             |
| <b>Assigned Commissioner: Michael R. Peevey</b>    | <b>Assigned ALJ: Richard Smith</b>                |

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:** Decision adopted revisions to the registration process for non-dominant interexchange carriers (NDIECs) established by D.97-06-107.

**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

| <b>Claimant</b>   | <b>CPUC Verified</b>  |
|---|---|
| <b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b> |   |
| 1. Date of Prehearing Conference:   | N/A Correct   |
| 2. Other Specified Date for NOI:  | In a proceeding initiated by a petition for rulemaking, an intervenor must file its NOI between the date the petition was filed until 30 days after the time for filing responsive pleadings, e.g., protests, responses, answers, or comments. (Rule 17.1(a)(3).) The petition was filed on July 9, 2009 and responsive pleadings were filed on August 19, 2009. Utility Consumers’ Action Network (UCAN) timely filed its NOI on September 17, 2009. |

|   |                    |         |
|---|--------------------|---------|
| 3. Date NOI Filed:  | September 17, 2009 | Correct |
| 4. Was the NOI timely filed?  |                    | Yes     |
| <b>Showing of customer or customer-related status (§ 1802(b)):</b>  |                    |         |
| 5. Based on ALJ ruling issued in proceeding number:   | N/A                | Correct |
| 6. Date of ALJ ruling:  | This decision      | Correct |
| <p>UCAN states that it is a category 3 customer which represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent “small commercial customers” (§ 1802(h)) who receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)), or to represent another eligible group.</p> <p>In D.98-04-059, the Commission directed intervenors to state in their NOIs which of three customer “categories” they fall within. UCAN is a “group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers.” The decision also requires groups such as UCAN to include in their NOIs a copy of the authorization in their articles of incorporation to represent residential customers, or to provide a reference to a previous filing. D.98-04-059, p. 30. UCAN provided the relevant portion of our articles of incorporation in an ALJ’s Ruling in Application (A.) 05-02-019 dated June 28, 2005. The articles of incorporation have not changed since the time of those earlier submissions.</p> <p>D.98-04-059 also directs groups such as UCAN to indicate the percentage of their members that are residential ratepayers. UCAN has approximately 36,000 dues paying members, of whom UCAN believes the vast majority are residential and small business ratepayers.</p> |                    |         |
| 7. Based on another CPUC determination (specify):   |                    |         |
| 8. Has the claimant demonstrated customer or customer-related status?   |                    | Yes     |
| <b>Showing of “significant financial hardship” (§ 1802(g)):</b>   |                    |         |
| 9. Based on ALJ ruling issued in proceeding number:   | N/A                |         |
| 10. Date of ALJ ruling:   | March 11, 2010     | Yes     |
| 11. Based on another CPUC determination (specify):  | D.10-03-020        | Yes     |
| 12. Has the claimant demonstrated significant financial hardship?   |                    | Yes     |
| <b>Timely request for compensation (§ 1804(c)):</b>   |                    |         |
| 13. Identify Final Decision   | D.10-09-017        | Correct |
| 14. Date of Issuance of Final Decision:   | September 3, 2010  | Correct |
| 15. File date of compensation request:  | November 1, 2010   | Correct |
| 16. Was the request for compensation timely?  |                    | Yes     |

**C. UCAN and CPUC Comments on Part I:**

| #  | Claimant | CPUC | Comment  |
|----|----------|------|--|
| 5  | X        |      | A ruling has not been issued within this proceeding regarding UCAN’s customer related status. However, UCAN can point to numerous other decisions in which the Commission has recognized UCAN’s customer status. UCAN cites an ALJ Ruling in A.08-12-009 as it occurred a few months prior to the initiation of this proceeding. UCAN can also point to more recent determinations such as an ALJ Ruling on March 26, 2010 in proceeding Rulemaking 08-12-009. |
|    |          | X    | We affirm here that UCAN qualifies as a category 3 customer, pursuant to § 1802(b)(1)(C) to seek compensation as an intervenor as a “group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers.”   |
| 11 | X        |      | D.10-03-020 issued on March 11, 2010 determined that UCAN had demonstrated significant financial hardship. The decision extended from UCAN’s participation in A.08-12-021.   |
|    |          | X    | Pursuant to § 1804(b)(1), a rebuttable presumption of eligibility exists for UCAN’s participation here since D.10-03-020 issued in A.08-12-021 was issued within a year of the commencement of this proceeding.  |

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Claimant’s description of its claimed contribution to the final decision**

| Contribution   | Citation to Decision or Record   | Showing Accepted by CPUC |
|--|--|--------------------------|
| 1. UCAN strongly supported the revising of the registration process and recommended that the Commission consider eliminating the registration process in favor of the more extensive Certificate of Public Convenience and Necessity (CPCN) application process. | D.10-09-017, pp. 14-15.<br><br>The Commission considered but did not adopt UCAN’s recommendation to consider eliminating the registration process in favor of the CPCN application process. The Commission determined it would revise the registration process, and the Decision discusses those changes throughout. | Yes                      |
| 2. UCAN supported renaming the Registration CPCN to help minimize confusion between the registration certificate and a CPCN. UCAN recommended renaming the authorizing document a “registration certificate” to reduce confusion.                                | D.10-09-017, p. 15.<br><br>The Commission renamed the authorizing document a “registration license” to minimize potential confusion.   | Yes                      |

|  |   |            |
|--|---|------------|
| <p>3. UCAN recommended adoption of a performance bond to help address the concerns of the State Controller’s Office Audit Report concerning the Commission’s inability to collect fines and restitution. UCAN specifically recommended that any bond requirement also apply to the services of telephone prepaid debit card providers.</p> | <p>D.10-09-017, p. 23.<br/>The Decision requires a performance bond to facilitate the collection of fines, penalties, and restitution. The performance bond requirement also applies to the services of telephone prepaid debit card providers, as recommended by UCAN.</p> | <p>Yes</p> |
| <p>4. UCAN recommended that a change of ownership or transfer of registration license be treated as new applicants which UCAN recommends should include a requirement on the applicants to demonstrate good standing.</p>  | <p>D.10-09-017, p. 43.<br/>The Decision requires a showing of good standing for applications to transfer registration licenses.</p>   | <p>Yes</p> |
| <p>5. UCAN supported the Order Instituting Rulemaking’s (OIR’s) proposal to adopt a minimum annual fee to fund Commission regulatory activities and help reduce the number of NDIECs, who are not actually providing services.</p>   | <p>D.10-09-017, p. 45.<br/>The Decision adopts the OIR’s proposal to establish a minimum annual fee for registration license holders to ensure that all registrants contribute a fair share toward the Commission’s annual operating budget.</p>                            | <p>Yes</p> |

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

|  | <b>Claimant</b> | <b>CPUC Verified</b> |
|--|-----------------|----------------------|
| <p><b>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</b></p>  | <p>Yes</p>      | <p>Correct</p>       |
| <p><b>b. Were there other parties to the proceeding?</b></p>   | <p>Yes</p>      | <p>Correct</p>       |
| <p><b>c. If so, provide name of other parties:</b> Sempra Broadband, Verizon Companies, CALTEL, and ExteNet Systems</p>  |                 | <p>Correct</p>       |
| <p><b>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</b><br/><br/>The nature and brevity of the proceeding was such that the parties did not coordinate. UCAN’s points were developed independently with a focus on the effect rule changes or no changes may impact consumers. There was relatively little duplication of UCAN’s testimony with that of DRA. The positions of parties other than DRA, were focused on the impact the change would have on their organization and/or to industry stakeholders at large in contrast to UCAN’s focus on the impact to consumers.</p> |                 | <p>Correct</p>       |

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

| Claimant's explanation of how its participation bore a reasonable relationship with benefits realized through claimant's participation   | CPUC Verified   |
|--|---|
| UCAN's work in this proceeding helped to strengthen consumer protections in connection with the simplified registration process. As cited above, the Commission referenced UCAN's comments in its decision concerning revising the NDIEC registration process, renaming the registration certificate, the adoption of a performance bond, requiring a showing good standing for applications to transfer licenses, and establishing a minimum annual fee. While exact monetary savings to consumers are not readily ascertainable, it is likely to exceed the amount of compensation requested here by UCAN. | After the reductions we make to UCAN's claim, the remaining hours and costs are reasonable and should be compensated. |

**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 | 13.80 | 155     | D.10-05-013     | 2,139.00 | 2009                                    | 9.50  | 155     | 1,473    |
| M. Scott                                     | 2010 | 1.10  | 155     | D.10-05-013     | 170.50   | 2010                                    | 0.00  | 155     | -0-      |
| A. Neill                                     | 2009 | 7.70  | 168     | D.10-08-018     | 1,293.60 | 2009                                    | 6.90  | 168     | 1,159    |
| M. Shames                                    | 2009 | 4.50  | 330     | D.09-10-053     | 1,485.00 | 2009                                    | 4.50  | 330     | 1,485    |
| M. Shames                                    | 2010 | 0.70  | 330     | D.10-10-012     | 231.00   | 2010                                    | 0.70  | 330     | 231      |
| <b>Subtotal: \$5,319.10</b>                  |      |       |         |                 |          | <b>Subtotal: \$4,348</b>                |       |         |          |
| INTERVENOR COMPENSATION CLAIM PREPARATION ** |      |       |         |                 |          |   |       |         |          |
| Item   | Year | Hours | Rate \$ | Basis for Rate* | Total \$ | Year                                    | Hours | Rate \$ | Total \$ |
| M. Scott                                     | 2010 | 1.00  | 77.50   | ½ 2010 rate     | 77.50    | 2010                                    | 1.00  | 77.50   | 78       |
| <b>Subtotal: \$ 77.50</b>                    |      |       |         |                 |          | <b>Subtotal: \$78</b>                   |       |         |          |
| <b>TOTAL REQUEST: \$5,396.60</b>             |      |       |         |                 |          | <b>TOTAL AWARD: \$4,426<sup>1</sup></b> |       |         |          |

\*\*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. Claimant's records should identify specific issues for which it seeks 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.

<sup>1</sup> Figure rounded to nearest dollar amount.

**C. CPUC Disallowances:**

| Hours                                     | Reason  |
|---|---|
| 2009-Scott general preparation (GP) hours | <p>The Commission opened this rulemaking to consider six questions:</p> <ol style="list-style-type: none"> <li>1) Should a performance bond be required as a condition of registration?</li> <li>2) Should registration certificates be granted for a limited duration, and should registrants be required to prove good standing as a condition for renewal or transfer of registration certificates?</li> <li>3) Should fingerprints, criminal background checks and/or other showings be required for registration applicants?</li> <li>4) Should registration applicants be subject to expanded fiscal and civil responsibility checks?</li> <li>5) Should the nominal \$75 application fee be increased, and if so, by how much and why? Should we require a minimum annual user fee, and if so, how much should that annual fee be and why?</li> <li>6) Should we rename the “registration Certificate of Public Convenience and Necessity” simply a “registration certificate” or “registration license,” in keeping with the more limited regulation contemplated in Pub. Util. Code §§ 885 and 1013?</li> </ol> <p>Scott’s timesheets indicate that he spent 52% of his total time on GP activities. We disallow as excessive 3.3 hours of Scott’s time spent on GP matters.</p> |
| 2009-Scott<br>2009-Neill                  | UCAN requests time for three attorneys to review the OIR. We disallow 1.0 hour of Scott’s time and 0.80 hour of Neill’s time spent on this task as duplicative of the compensated efforts of Shames.  |
| 2010-Scott                                | UCAN requests time for both Scott’s and Shames’s review of the final decision. We disallow 1.10 hours of Scott’s time spent on this task as duplicative of the compensated efforts of Shames.   |

**PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?**

|    |
|----|
| No |
|----|

**B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?**

|     |
|-----|
| Yes |
|-----|

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to D.10-09-017.
2. The claimed fees and costs, as adjusted herein, 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 \$4,426.

**CONCLUSION OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$4,426.
2. Within 30 days of the effective date of this decision, the CPUC Intervenor Compensation Fund shall pay Claimant 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 January 15, 2011, the 75<sup>th</sup> 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.

This decision is effective today.

Dated March 10, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

**APPENDIX****Compensation Decision Summary Information**

|                               |                                   |                              |
|-------------------------------|-----------------------------------|------------------------------|
| <b>Compensation Decision:</b> | D1103023                          | <b>Modifies Decision?</b> No |
| <b>Contribution Decision:</b> | D1009017                          |                              |
| <b>Proceeding:</b>            | R0907009                          |                              |
| <b>Author:</b>                | ALJ Richard Smith                 |                              |
| <b>Payer:</b>                 | CPUC Intervenor Compensation Fund |                              |

**Intervenor Information**

| <b>Intervenor</b>                 | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Multiplier?</b> | <b>Reason Change/Disallowance</b>      |
|-----------------------------------|-------------------|-------------------------|-----------------------|--------------------|--|
| Utility Consumers' Action Network | 11-01-10          | \$5,396.60              | \$4,426               | No                 | excessive hours, duplication of effort |

**Advocate Information**

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b> | <b>Intervenor</b>                 | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|-------------|-----------------------------------|-----------------------------|----------------------------------|---------------------------|
| Mike              | Scott            | Attorney    | Utility Consumers' Action Network | \$155                       | 2009/2010                        | \$155                     |
| Art               | Neill            | Attorney    | Utility Consumers' Action Network | \$168                       | 2009                             | \$168                     |
| Michael           | Shames           | Attorney    | Utility Consumers' Action Network | \$330                       | 2009/2010                        | \$330                     |

**(END OF APPENDIX)**