Decision 11-05-015 May 5, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.	Application 09-08-019 (Filed August 31, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-12-053

Claimant: Utility Consumers' Action Network (UCAN)	**For contribution to D.10-12-053**
Claimed: $133,137[1]	**Awarded: $119,174.50 (reduced 10%)**
Assigned Commissioner: Timothy Alan Simon	**Assigned ALJ: Maribeth A. Bushey**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: Decision granting request, with exceptions, of SDG&E for "Z-Factor" treatment[2] for liability insurance premium and deductible expense increases.

[1] UCAN's claim actually totals $133,137 before its voluntary reductions. We use the correct figure here rather than the adjusted amount UCAN lists.

[2] SDG&E's application seeks Commission authorization to increase its electric and natural gas revenue requirement by $28,884.00 to reflect unforeseen liability insurance premium and deductible expense, and to create a new advice letter and amortization process for future post-test year ratemaking adjustment. SDG&E contends that the unforeseen liability insurance premium and deductible expense meets the Commission's standard for treatment as unexpected and uncontrollable events which occurred after test year ratemaking has been completed, and the adjustment factor is colloquially referred to as a "Z-factor" adjustment. The "Z-factor" was created in light of the Commission's desire to create incentives for cost reduction, but provide utilities protection from unforeseen and exogenous events. (*See* D.10-12-053 at 5.)

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of Notice of Intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	December 14, 2009	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	December 31, 2009	Correct
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.09-10-014	Correct
6. Date of ALJ ruling:	May 5, 2010	Correct
7. Based on another CPUC determination (specify):	D.10-05-013	Correct
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.09-10-014	Correct
10. Date of ALJ ruling:	May 5, 2010	Correct
11. Based on another CPUC determination (specify):	D.10-05-013	Correct
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-12-053	Correct
14. Date of Issuance of Final Decision:	December 23, 2010	Correct
15. File date of compensation request:	January 11, 2011	Correct
16. Was the request for compensation timely?		Yes

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 presented the testimony of Robert Sulpizio, an insurance expert with 48 years of experience in the	D.10-12-053 at 21 and ALJ Proposed Decision at 16	Yes

insurance industry." Which includes 45 years as an insurance broker with corporate clients in the public utility, financial services and other business sectors		
2. As explained more specifically in the following listed contributions, Sulpizio's testimony disputed that San Diego Gas & Electric Company (SDG&E) could satisfy four of the eight Z-Factor criteria contending "that SDG&E could control the insurance premium costs, asserted that such costs are a normal cost of doing business that did not disproportionately affect SDG&E, and that the costs are not reasonably incurred."	D.10-12-053 at 21-22 and ALJ Proposed Decision at 16.	Yes
3. UCAN's expert Sulpizio stated that in a proper insurance renegotiation process SDG&E would have met directly with insurance underwriters, as it is known that the client in these situations is better able to educate insurers about potential risks and risk offsets. The issue of inverse condemnation being one specific example where SDG&E failed to mitigate insurers fears of risk.	D.10-12-021 at 22 and ALJ Proposed Decision at 16	Yes
4. "The testimony provided a detailed analysis of the options to traditional liability insurance that SDG&E could have considered but did not."	D.10-12-021 at 22 and ALJ Proposed Decision at 17	Yes
5. "Sulpizio recommended that public utilities use the same practices used by other commercial customers to hedge risk cost-effectively. Among the Alternative Risk Transfer options suggested for consideration were: captive insurance, risk retention groups, and capital market solutions such as catastrophe bonds."	D.10-12-021 at 23 and ALJ Proposed Decision at 17	Yes
6. Sulpizio's expert testimony also asserted that proper insurance	D.10-12-021 at 23 and ALJ Proposed Decision at 17.	Yes

obtainment protocol would have them exploring every possible alternatives and be given a more thorough consideration and analysis then a few telephone conversations which SDG&E claimed sufficient.		
7. UCAN in its brief brought consideration to the strength of SDG&E's testimony noting it reliance on a junior manager submitting largely hearsay testimony.	D.10-12-021 at 23 and ALJ Proposed Decision at 18	Yes
8. UCAN brief explained for the Commission's consideration how under past Commission precedent SDG&E cannot meet its burden because the insurance costs are not beyond SDG&E's control, are a normal cost of doing business, and do not have a major impact on SDG&E's overall cost.	D.10-12-021 at 23-25 and ALJ Proposed Decision at 18-21	Yes
9. "UCAN's witness presented a credible challenge to sufficiency of SDG&E's negotiation efforts, and offered examples of alternatives to the traditional insurance market that SDG&E should have more thoroughly evaluated." Leading the Administrative Law Judge (ALJ) to conclude that "SDG&E has not shown that it incurred objectively identifiable insurance costs that cannot be significantly affected by any action of management." While the statement is very brief it encompasses within it UCAN's expert's testimony and significant portions of UCAN's brief including the testimony discussion of control. (See UCAN Brief p. 11-14) and the entire discussion concerning SDG&E Failure to Mitigate Premium Cost Increases. (UCAN Brief p. 17-29.)	ALJ Proposed Decision at 32 and 45 UCAN Opening Brief pp. 11-14 and pp. 17-29	Yes

10. The Proposed Decision determined that in terms of Commission precedent, SDG&E had not shown that these costs were outside of management's control notably acknowledging that SDG&E was "free to comparison shop and negotiate the most favorable terms"…and management retained autonomy to determine the implementation action." UCAN's brief contained an in-depth conversation about how the costs were not outside of the control of SDG&E's management and specifically engages in an in-depth analysis of Commission precedent.	ALJ Proposed Decision at 32-33 UCAN Opening Brief pp. 7-9	Yes

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

Claimant		CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct
c. If so, provide name of other parties: Ruth Hendricks		Correct
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: UCAN held meetings with DRA and Hendricks to coordinate the issues in the case and avoid duplication of work. UCAN is the only party to present expert testimony of an Insurance expert. UCAN specifically limited its focus to a few select "Z-factor" criteria: whether the costs were a normal cost of doing business that did not disproportionately affect SDG&E, whether those costs were reasonably incurred, and whether those costs were incurred reasonably in specific coordination with DRA who focused on whether the costs were exogenous, whether the costs were measureable with regard to future costs, and whether the costs were within SDG&E's control. Though both UCAN and DRA addressed the issue of whether the costs were within SDG&E's control UCAN presented wholly independent arguments and analysis reaching the same conclusion as DRA, but under a separate rationale.		We agree that UCAN took necessary steps to avoid duplicating the efforts of other parties and coordinated its efforts so that it supplemented, complemented or contributed to the work of the other active parties in this proceeding.

C. UCAN's Additional Comments on Part II:

Claimant	CPUC	Comment
X		The Commission has also found that an intervenor can "make a valuable contribution by performing a reasonableness review to test the prudence of [a utility's] decisions, procedures and actions." (D.06-03-001, slip op. at 12.) This compensation request closely mirrors the UCAN compensation request made in A.06-06-010 and A.02-12-027. In the compensation decision (D.05-08-014) related A.02-12-027, the Commission found: "UCAN made numerous significant recommendations that were all considered, in the two proposed decisions of ALJ Long and of the original assigned Commissioner, Carl Wood." Similarly, in D.06-03-001, the Commission wrote: D.05-08-037 did not adopt UCAN's ratemaking recommendations. However, the proposed decision of ALJ Long did adopt most of UCAN's recommendations…… As noted earlier, a participant may sometimes make a substantial contribution even when the participant's positions are not adopted in the final determination of the issues considered in the proceeding……. UCAN's participation was critical to that examination, and we find that to that extent UCAN made a substantial contribution to D.05-08-037. (D.06-03-001, at 3-6.) As will be shown, not only did the final decision consider UCAN's evidence and findings, but the ALJ's proposed decision adopted UCAN's factual assertions and presented evidence as well as UCAN's specific recommendations to deny the application. For these reasons, UCAN seek full compensation for all of its work in this application.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	CPUC Verified
While a pure balance of monetary savings for consumers against costs incurred cannot be established in this proceeding. UCAN's costs in this proceeding were reasonable in light of the significant contribution UCAN made in helping the ALJ reach her decision. As explained more fully above in Part II, UCAN provided a necessary expert witness to challenge the sufficiency of SDG&E's insurance procurement process. UCAN's evidence and argument are discussed greatly in the ALJ's proposed decision and in the adopted decision showing that its participation was important to ensuring a	After the adjustment we make to UCAN's claim, the remaining hours and costs are reasonable and bear a reasonable relationship with benefits to ratepayers.

thorough evaluation of the "Z-factor" criteria. Further in an effort to economize, UCAN utilized attorney Mike Scott, when appropriate as his claimed hourly rate is significantly lower than Michael Shames' hourly rate, thereby reducing UCAN's overall claimed costs. Additionally, as discussed in the Comments to Part III section C, UCAN is proposing a number of voluntary hour reductions to align its request with its significant contribution.	

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $[3]**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
M. Shames	2009	35.60	330	D.09-11-026	11,748	2009	35.60	330	11,748
M. Shames	2010	139.20	330	D.10-10-012	45,936	2010	103.70*	330	34,221
M. Scott	2010	40.70	155	D.10-05-013	6,308.50	2010	26.20*	155	4,041
					***Subtotal:* $63,992.50**				***Subtotal:* $50,030**
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
R. Sulpizio	2010	162.00	390	Adopted here	63,180	2010	162.00	390	63,180
					***Subtotal:* $63,180**				***Subtotal:* $63,180**
OTHER FEES (Travel)									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
M. Shames	2009	12.50	165	½ D.09-11-026 rate	2,062.50	2009	12.50	165	2,062.50
M. Shames	2010	13.50	165	½ D.10-10-012 rate	2,227.50	2010	13.50	165	2,227.50
M. Scott	2010	6.90	77.50	½ D.10-05-013 rate	534.75	2010	6.90	77.50	534.75
					***Subtotal:* $4,824.75**				***Subtotal:* $4,824.75**
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
M. Scott	2011	5.00	77.50	½ D.10-05-013 rate	387.50	2011	5.00	77.50	387.50
					***Subtotal:* $387.50**				***Subtotal:* $387.50**

[3] In the text of UCAN's claim, it requests $400 as an hourly rate, but lists an hourly rate of $390 in calculating its claim. As explained on page 10, we approve a rate of $390.

COSTS			
Item	**Detail**	**Amount $**	**Amount $**
Airfare	For attendance at PHC, Hearings and Closing Argument	534	534
Hotel	Attend Hearings	210.15	210.15
BART	Transportation to attend Closing Argument	8.10	8.10
		***Subtotal:* $752.25**	***Subtotal:* $752.25**
		TOTAL REQUEST: $133,137	**TOTAL AWARD: $119,174.50**

* These adjusted hours incorporate the voluntary reductions (35.5 hrs for Shames and 14.5 hours for Scott), that UCAN has made to its claim. UCAN's reasoning for its voluntary reductions are outlined in Part III, Section C of this claim.

**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.

C. UCAN's Comments Documenting Specific Claim:

Comments	Description/Comment
Allocation of Time by Issue for Attorney Michael Shames	As also noted in Mr. Shames's time sheet (See Attachment 3) UCAN used the following codes to identify issues that he addressed. Mr. Shames was the lead attorney in this proceeding and was involved in every issue within the proceeding. "GP" – General preparation work necessary for participation in this proceeding such as reading the application, reading other pleadings, reading proposed decisions "Disc" – Discovery work that is not issue-specific "Ins" – Work product prepared focused on Insurance procurement policies & practices "Legal" Work product prepared focused on Z-factor legal issues. This category specifically includes standard of review and Z-factor criteria: Costs beyond Management's Control; Costs a normal cost of doing business; costs do not have a disproportionate impact; costs do not have a major impact; and whether costs are reasonably incurred. UCAN notes that in this proceeding it is very difficult to separate out its legal issues it specifically focused on. When Z-factor criteria is discussed in Commission precedent, as noted in the ALJ Proposed Decision and the adopted Alternate Decision, the Z-Factor elements often overlap in analysis. Therefore, while working on one criterion it was almost impossible not to also develop analysis on one or more of the other criteria. "Travel" Time spent traveling compensated at ½ rate. While included in the other fees

	sections in the request it is included in the time sheet.
Allocation of time by Issue for Attorney Mike Scott	Mr. Scott work focused almost exclusively on issues related to Z-Factor legal issues. This work specifically includes standard of review and Z-factor criteria: Costs beyond Management's Control; Costs a normal cost of doing business; costs do not have a disproportionate impact; costs do not have a major impact; and whether costs are reasonably incurred. UCAN notes that in this proceeding it is very difficult to separate out its legal issues it specifically focused on. When Z-factor criteria is discussed in Commission precedent, as noted in the ALJ Proposed Decision and the adopted Alternate Decision, the Z-Factor elements often overlap in analysis. Therefore, while working on one criterion it was almost impossible not to also develop analysis on one or more of the other criteria. Therefore, Mr. Scott's work is designated in categories based on the nature of the work performed under the specific legal issue. With the one exception being travel, which is compensated at half time and merely indicating unavoidable travel time. The following codes were used: "GP": General Preparation work necessary for completing the relevant portions of Mr. Scott's work this includes legal research, reviewing relevant testimony, reviewing proposed and alternate decisions, and other documents filed in the proceeding. "Br": Time spent preparing documents to be filed before the Commission including Briefs, reply briefs, and Comments. "Hrg": Time spent in hearings "Travel": Unavoidable travel time to participate in hearings. Compensated at ½ rate "IRC": Time spent preparing intervenor compensation request. Compensated at ½ rate. While Travel and IRC are included in the Total hour count in the time sheet, they are counted into "Other fees" and Intervenor Compensation Claim Request in the ½ rate section.
Allocation of time by Issue for Expert Witness	UCAN's expert was specifically focused on the issue of Insurance Procurement, its process, practices, and policies. Therefore his work is categorized under one issue, but divided between work done on the topic and time spent in hearings. The following codes were used: Ins: Research done, work prepared, and time spent providing expertise on the issue of Insurance Procurement. Hrg: Time Spent in Hearings
Deductions	UCAN has been reviewing its hours spent in this proceeding in light of its substantial contribution. While UCAN believes the time it spent in this proceeding was necessary, it is proposing the following voluntary hour reductions to align its request with its claim of significant contribution. Reductions to Michael Shames hours:

27.3 hours for work related to the UCAN's brief in light of the time spent by both Mr. Scott and Mr. Shames on issues related to the brief.

2.2 hours for work related to UCAN's reply brief in light of the time spent by both Mr. Scott and Mr. Shames on issues related to the brief.

3.00 hours related to UCAN's comments on the Alternate Proposed Decision in light of the minimum impact the comments appeared to have on the final decision.

3.00 hours from time spent in hearings in light of Mr. Shames having to leave the hearings early.

These reduction reduce Mr. Shames's claim as followed:

Year	Hours	Rate	Total Deduction
2009	(0)	$330	$(0)
2010	(35.50)	$330	−$11,715.00

Reduction to Mike Scott Hours
2.00 hours for review of PD and APD as duplicative of time spent by Mr. Shames in this proceeding

4.40 hours for time spent preparing comments for the APD in light of the time spent on the proceeding.

8.10 hours for time spent researching and preparing memorandum for the opening brief in light of the impact UCAN's discussion of normal costs of business and discussion of disproportionate impact of Rates on SDG&E had on both the PD and APD in the proceeding.

Year	Hours	Rate	Total Deduction
2010	(14.50)	$155	−$2,247.50

A total overall deduction of −$13,962.50 is requested.

D. CPUC Adoptions, Adjustments and Disallowances:

Item	Adoptions
2010 hourly rate- Robert Sulpizio	Sulpizio served as an expert witness for UCAN on the topic of "recovering unforeseen insurance expenses". This is Sulpizio's first appearance as an expert witness before the Commission. Sulpizio is an insurance expert with 48 years of experience working as an underwriter, broker and consultant to corporate clients. Sulpizio has represented clients in industries including public utilities, financial services, consumer products and durable goods manufacturing, construction, retail and pharmaceutical areas. Sulpizio served for 3 years as a property and casualty underwriter for Travelers Insurance

	Company and the following 45 years with multiple other insurance and holding groups. Although UCAN has requested approval for an hourly rate of $400 for Sulpizio's work here, we note that this exceeds the range of ($155-$390) we have established for experts with 13+ years of experience approved in D.08-04-010 and ALJ 247. Instead, we adopt an hourly rate of $390 for Sulpizio's 2010 work in this proceeding.

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 Decision 10-12-053.

2. The claimed fees and costs, 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 $119,174.50.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded $119,174.50.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company 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 March 27, 2011, 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.

This decision is effective today.

Dated May 5, 2011, at San Francisco, California.

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

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1105015	**Modifies Decision?** No
Contribution Decision:	D1012053	
Proceeding:	A0908019	
Author:	ALJ Maribeth A. Bushey	
Payer:	San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	01-11-11	$133,137	$119,174.50	No	UCAN makes voluntary reductions to its claim for duplication of effort, early departure from hearings, lack of substantial contribution to PD and APD and excessive time spent preparing comments

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	$330	2009/2010	$330
Mike	Scott	Attorney	Utility Consumers' Action Network	$155	2010/2011	$155
Robert	Sulpizio	Expert	Utility Consumers' Action Network	$390	2010	$390

(END OF APPENDIX)