

Decision 02-11-020 November 7, 2002

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

Utility Consumers' Action Network,

Complainants,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 00-08-040  
(Filed August 28, 2000)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants \$77,297.00 to Utility Consumers' Action Network (UCAN) for contributions to Decision (D.) 02-05-001.

**1. Background**

On August 28, 2000, Utility Consumers' Action Network (UCAN) filed a complaint alleging that San Diego Gas & Electric Company's (SDG&E) meter reading quality for both gas and electric meters, in 1999 and 2000, had deteriorated from historical practice and consumers were prejudiced by the increase in meters being estimated rather than read. Evidentiary hearings took place after discovery and a meet and confer to refine and narrow the issues for hearing. The scope of the hearing was limited to two issues: 1) the appropriate benchmark against which to measure SDG&E's meter reading performance; and 2) how the Commission should use the adopted benchmark. D.02-05-001 established a progressive performance benchmark for SDG&E for the number of

estimated accounts per thousand meters processed and required SDG&E to maintain accurate records of the estimated accounts and report annually to the Commission on its monthly estimated accounts.

On February 2, 2001, UCAN filed a timely notice of intent to claim compensation. Administrative Law Judge Brown found UCAN eligible to file for intervenor compensation by ruling dated March 1, 2001.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>1</sup> Section 1804(a) requires an intervenor to file an NOI to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.<sup>2</sup> It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "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 factual contentions, legal contentions, or specific policy or procedural

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<sup>1</sup> All statutory citations are to the Public Utilities Code.

<sup>2</sup> To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

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 the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. Timeliness of Request**

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.02-05-001 was effective on May 1, 2002 and was mailed to parties of record the next day. UCAN's request for compensation was filed on May 10, 2002 and thus is timely.

### **4. Substantial Contribution to Resolution of Issues**

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total. Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission

uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.<sup>3</sup>

UCAN's goal in bringing this complaint was establish a performance benchmark for SDG&E's meter reading practices and to require SDG&E record and report on its performance with respect to estimated meter reads. As a result of UCAN's complaint, the Commission established a progressive performance benchmark for SDG&E to improve its meter-reading performance by reducing the number of meters it estimates each month. In addition, the Commission established specific reporting requirements in order to monitor SDG&E's performance. Without UCAN's efforts in brining the complaint, these criteria would not have been established. UCAN made a substantial contribution to the outcome of the case.

#### **4.1 Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

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<sup>3</sup> See D.98-04-0590, *mimeo.* at 41.

In this proceeding, UCAN presented testimony that indicated substantial numbers of affected customers and costs to SDG&E's entire customer base. UCAN identified that 76,500 more customers received estimated bills during 1999/2000 than in 1996. (Exhibit 1, p. 2.) Customers paid for, and reasonably expected, accurate meter reading service. Besides promoting billing accuracy, accurate meter reads will allow customers to better monitor their conservation efforts and see the positive results of their efforts reflected on the next bill, without running the risk that the bill will be estimated and the customers will not see a reduction in usage, get discouraged, and stop their conservation efforts. The Commission specifically found that "improved meter reading performance will promote billing accuracy that will assist customers in monitoring utility costs and conservation efforts." (D.02-05-001, Finding of Fact 4.) Thus, even though the number of meters estimated each month is relatively small, reducing the number of estimated bills will help utility customers manage their own energy use, reducing their bills.

UCAN also asserted that \$3.3 million in performance based ratemaking awards to SDG&E were associated with reduced meter reading costs over the time period that SDG&E's number of estimated bills increased. (Exhibit 1, p. 39.) While the decision did not decide this issue or require SDG&E to refund the awards, the decision is designed to ensure that SDG&E's customer receive the full meter reading services that they pay for.

All of these factors lead us to conclude that the participation of UCAN was productive and yielded ratepayer benefits in excess of the costs incurred. As UCAN was the only complainant, its efforts did not duplicate those of any other party.

## 5. Reasonableness of Requested Compensation

UCAN requests \$77,297.00<sup>4</sup> as follows:

| Advocate  | Year | Hours  | Rate      | Total       |
|-----------|------|--------|-----------|-------------|
| Shames    | 2000 | 53.3   | \$ 195.00 | \$10,393.50 |
| Shames    | 2001 | 179.4  | \$ 195.00 | \$34,983.00 |
| Shames    | comp | 4      | \$ 97.50  | \$ 390.00   |
|           |      |        | subtotal  | \$45,766.50 |
| Beebe     | 2000 | 83.2   | \$ 75.00  | \$ 6,240.00 |
| Beebe     | 2001 | 54.7   | \$ 75.00  | \$ 4,102.50 |
| Schilberg | 2001 | 154.77 | \$ 130.00 | \$20,120.10 |
| Schilberg | 2002 | 0.77   | \$ 130.00 | \$ 100.10   |
| Marcus    | 2001 | 1.08   | \$ 175.00 | \$ 189.00   |
|           |      |        | subtotal  | \$30,751.70 |
|           |      |        | Expenses  | \$ 778.80   |
|           |      |        | total     | \$77,297.00 |

### 5.1 Hours Claimed

UCAN notes that the hours claimed in this proceeding are higher than its typical effort in non-adjudicatory proceedings. Because of the fact-specific nature of a complaint case, UCAN required a significant amount of attorney, staff, and expert time to process, review, investigate, and analyze customer complaints about estimated bills, perform discovery, and prepare the case. Work was performed by UCAN volunteers when possible, but UCAN staff and experts prepared the complaint and testimony. We find that UCAN has adequately and reasonably supported the hours for which it claims compensation.

### 5.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and

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<sup>4</sup> UCAN's claim is for \$78,416.72, but by our calculation, relying on UCAN's supporting documents, the total comes to \$77,297.00, as set forth in the table above. Today's award allows all documented hours and expenses.

experience who offer similar services." We have previously adopted the requested rate for Michael Shames (\$195/hour) in D.02-01-025 for work in 1999 and 2000. He requests the same rate for work in 2001 and we grant that request.

UCAN requests that we establish a new hourly rate for staff member Jodi Beebe of \$75/hour for work in 2000 and 2001. Beebe has been with UCAN since 1998 where she has served a project manager of energy education grants and been involved with energy education. She holds a Bachelor of Arts in Engineering from the University of Arizona. The requested hourly rate is consistent with rates awarded to other non-attorneys with comparable experience and we adopt the requested rate.

UCAN also relied on the services of Gayatri Schilberg and William Marcus of JBS Energy. Schilberg and Marcus billed UCAN for at the firm's standard rates of \$130/hour and \$175/hour for their services during 2001.<sup>5</sup> We previously adopted hourly rates of \$115 and \$160 for Schilberg and Marcus for work performed in fiscal year 2000-2001. UCAN submitted documentation in its claim in A.93-12-025 et al., filed prior to this request, to demonstrate the reasonableness of the requested rates. We have relied on the information filed in A.93-12-025 et al. to evaluate the reasonableness of the requested rate increases.

While the percentage increases requested for these experts are larger than typical, they are supported by resumes and summaries of the work experience of Schilberg and Marcus and by comparing their requested rates with rates paid to others offering similar expertise and services. Marcus has been involved in energy policy and regulation for more than twenty years and

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<sup>5</sup> JBS Energy increased its hourly rates in March 2001 consistent with their change in fiscal year.

Schilberg has more than twenty years of experience in economic and statistical research. The increased rates have been adequately documented and we approve them.

**5.3 Other Costs**

UCAN has identified \$778.80 in expenses associated with this case. Compensation is sought for travel, photocopying, postage, and telephone expenses. We find these expenses reasonable.

**6. Award to UCAN**

We award UCAN \$77,297.00 for contributions to D.02-05-001, as detailed below.

| Advocate  | Year | Hours  | Rate      | Total       |
|-----------|------|--------|-----------|-------------|
| Shames    | 2000 | 53.3   | \$ 195.00 | \$10,393.50 |
| Shames    | 2001 | 179.4  | \$ 195.00 | \$34,983.00 |
| Shames    | comp | 4      | \$ 97.50  | \$ 390.00   |
|           |      |        | subtotal  | \$45,766.50 |
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| Schilberg | 2002 | 0.77   | \$ 130.00 | \$ 100.10   |
| Marcus    | 2001 | 1.08   | \$ 175.00 | \$ 189.00   |
|           |      |        | subtotal  | \$30,751.70 |
|           |      |        | Expenses  | \$ 778.80   |
|           |      |        | total     | \$77,297.00 |

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three month commercial paper rate), commencing the 75<sup>th</sup> day after UCAN filed its compensation request. Interest will continue until the utility makes full payment. As the utility who was the subject of the instant complaint, SDG&E will pay the full award.

As in all intervenor compensation decision, we put UCAN on notice that the Commission Staff may audit record related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific

issues for which UCAN requested compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

### **7. Waiver of Comment Period**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

### **8. Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and Carol Brown is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. UCAN made a timely request for compensation for its contributions to D.02-05-001.
2. UCAN contributed substantially to D.02-05-001.
3. The participation of UCAN was productive in that the costs claimed for its participation were less than the benefits realized.
4. UCAN requests hourly rates for Shames that have previously been approved by the Commission.
5. The proposed hourly rates for Beebe, Marcus, and Schilberg are reasonable.
6. The hours claimed for work performed in this case are itemized and reasonable.
7. The miscellaneous costs incurred by UCAN are reasonable.
8. The Appendix to this decision summarizes today's award.

### **Conclusions of Law**

1. UCAN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. UCAN should be awarded \$77,297.00 for contributions to D.02-05-001.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that UCAN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. Utility Consumers' Action Network (UCAN) is awarded \$77,297.00 in compensation for its substantial contribution to Decision 02-05-001.

2. San Diego Gas & Electric Company (SDG&E) shall pay UCAN the award granted by Ordering Paragraph 1. Payment shall be made within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning the 75<sup>th</sup> day after May 10, 2002, the date the request was filed.

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

4. Case 00-08-040 is closed.

5. This order is effective today.

Dated November 7, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners



### Compensation Decision Summary Information

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|----------------------------------|----------------------------------|
| <b>Compensation Decision(s):</b> | D0211020                         |
| <b>Contribution Decision(s):</b> | D0205001                         |
| <b>Proceeding(s):</b>            | C0008040                         |
| <b>Author:</b>                   | ALJ Brown                        |
| <b>Payer(s):</b>                 | San Diego Gas & Electric Company |

### Intervenor Information

| <b>Intervenor</b>                 | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Reason Change/ Disallowance</b> |
|-----------------------------------|-------------------|-------------------------|-----------------------|------------------------------------|
| Utility Consumers' Action Network | 5/10/02           | \$78,416.72             | \$77,297.00           | arithmetic errors                  |

### 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> |
|-------------------|------------------|---------------|-----------------------------------|-----------------------------|----------------------------------|---------------------------|
| Michael           | Shames           | Attorney      | Utility Consumers' Action Network | \$195                       | 2000                             | \$195                     |
| Michael           | Shames           | Attorney      | Utility Consumers' Action Network | \$195                       | 2001                             | \$195                     |
| Jodi              | Beebe            | Policy Expert | Utility Consumers' Action Network | \$75                        | 2000                             | \$75                      |
| Jodi              | Beebe            | Policy Expert | Utility Consumers' Action Network | \$75                        | 2001                             | \$75                      |
| Gayatri           | Schilberg        | Economist     | Utility Consumers' Action Network | \$130                       | 2001                             | \$130                     |
| Gayatri           | Schilberg        | Economist     | Utility Consumers' Action Network | \$130                       | 2002                             | \$130                     |
| William           | Marcus           | Economist     | Utility Consumers' Action Network | \$175                       | 2001                             | \$175                     |